

12:35:03 1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF TEXAS  
3 MARSHALL DIVISION  
4  
5 GREE, INC., ) ( CIVIL ACTION NOS.  
6 PLAINTIFFS, ) ( 2:19-CV-70-JRG-RSP  
7 VS. ) ( 2:19-CV-71-JRG-RSP  
8 SUPERCELL OY, ) ( MARSHALL, TEXAS  
9 DEFENDANTS. ) ( SEPTEMBER 11, 2020  
10 ) ( 12:40 P.M.  
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TRANSCRIPT OF JURY TRIAL

VOLUME 4 - AFTERNOON SESSION

BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP

UNITED STATES CHIEF DISTRICT JUDGE

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18 (Proceedings recorded by mechanical stenography, transcript produced on a CAT system.)

12:39:52 1 P R O C E E D I N G S

12:39:52 2 (Jury out.)

12:40:17 3 COURT SECURITY OFFICER: All rise.

12:40:18 4 THE COURT: Be seated, please.

12:41:17 5 All right. Mr. Moore, you may return to the

12:41:22 6 podium.

12:41:24 7 MR. MOORE: Thank you, Your Honor.

12:41:24 8 THE COURT: And while he's doing that,

12:41:27 9 Mr. Fitzpatrick, why don't you bring in the jury.

12:41:31 10 COURT SECURITY OFFICER: Yes, sir.

12:41:32 11 All rise.

12:41:36 12 (Jury in.)

12:41:56 13 THE COURT: Please be seated.

12:42:00 14 We will continue with the direct examination of

12:42:08 15 Dr. Robert Akl by the Plaintiff.

12:42:09 16 Mr. Moore, you may continue.

12:42:11 17 MR. MOORE: Thank you, Your Honor.

12:42:11 18 ROBERT AKL, PH.D., PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

12:42:11 19 DIRECT EXAMINATION CONTINUED

12:42:12 20 BY MR. MOORE:

12:42:12 21 Q. Dr. Akl, when we broke for lunch, I think you were just

12:42:17 22 starting to illustrate your testimony regarding the '873

12:42:21 23 patent and why Brawl Stars and Supercell infringe

12:42:25 24 Element a; do you recall that?

12:42:29 25 THE COURT: Let me interrupt just a second.

12:42:31 1 MR. MOORE: I'm sorry.

12:42:32 2 THE COURT: I failed to do something.

12:42:34 3 Ladies and gentlemen of the jury, when you went  
12:42:35 4 out for lunch, the Defendants had raised an objection as to  
12:42:39 5 some of Dr. Akl's testimony. I dealt with it -- I dealt  
12:42:42 6 with that without you in the courtroom. You need to know I  
12:42:47 7 overruled that objection, so you may consider all of the  
12:42:51 8 testimony that you heard.

12:42:53 9 Now let's proceed.

12:42:54 10 MR. MOORE: Thank you, Your Honor.

12:42:54 11 Q. (By Mr. Moore) Dr. Akl, would you please continue to  
12:42:56 12 illustrate your testimony regarding Element 1a, using the  
12:43:01 13 video in Plaintiff's Exhibit 139?

12:43:03 14 MR. MOORE: And if we could play that please?

12:43:05 15 A. So I hit play to start finding a player, and we are  
12:43:12 16 looking for a player -- actually, five; two on my side and  
12:43:17 17 three on the other side.

12:43:19 18 And then to play the game, the first touch  
12:43:22 19 operation is what I'm doing with my right thumb. So I  
12:43:26 20 press and I hold. When I press, this red button appears,  
12:43:30 21 and I keep my finger on the display and then I aim.

12:43:34 22 So I move my thumb up, down, left, right, and the  
12:43:38 23 cone that my player -- that comes out of my player, that  
12:43:46 24 follows the movement of my right thumb.

12:43:48 25 And so as we look at the video, the first touch

12:43:53 1 operation is what I'm doing with my right thumb in terms of  
12:43:56 2 pressing to get the red button and then holding it on the  
12:44:02 3 screen, and then moving it -- dragging it -- dragging my  
12:44:05 4 thumb just a little bit up and down, left and right, the  
12:44:08 5 same way you would move a controller, but this is a virtual  
12:44:11 6 controller, and that does the aiming of the cone.

12:44:15 7 So the cone coming out of my player follows the  
12:44:18 8 direction of -- of my thumb.

12:44:23 9 Q. (By Mr. Moore) Okay.

12:44:24 10 MR. MOORE: And could we go back into that video.

12:44:27 11 Could you perhaps find a spot where the cone appears?

12:44:31 12 Q. (By Mr. Moore) Because you said it appears when you  
12:44:33 13 touch your right thumb; is that right?

12:44:34 14 A. No, sorry. When I touch and I move my finger that's  
12:44:39 15 when the cone first appears.

12:44:40 16 Q. Okay.

12:44:42 17 A. When I touch the button, the red button appears.

12:44:44 18 Q. I'm sorry. Thank you for clarifying that.

12:44:46 19 MR. MOORE: Let's see if we can get a good spot  
12:44:49 20 here. There we go, here -- you had it. Move back a little  
12:44:56 21 more, a little more.

12:45:00 22 Q. (By Mr. Moore) All right. Now, you see the cone  
12:45:02 23 there, I know it's blocked by these bushes or whatever they  
12:45:05 24 are. Is that the cone you're talking about?

12:45:07 25 A. Yes.

12:45:07 1 Q. And what does that cone indicate within the game?

12:45:09 2 A. That's the -- the range where I can shoot.

12:45:13 3 Q. Okay. And how does that move when you touch the screen

12:45:19 4 with your right thumb?

12:45:21 5 A. So the cone will move in parallel with my thumb. So as

12:45:25 6 I move my right thumb to the right, the cone will move to

12:45:28 7 the right, the aiming will shift.

12:45:31 8 I move my player with my left thumb. So the blue

12:45:36 9 button will move the player. The right thumb will move the

12:45:40 10 cone. And the cone will follow the movement of my right

12:45:41 11 thumb.

12:45:41 12 Q. Okay. I think we've taken one of these videos and

12:45:44 13 slowed it down a little bit.

12:45:46 14 MR. MOORE: Can you please pull that up,

12:45:52 15 Mr. Groat?

12:45:56 16 Q. (By Mr. Moore) And let's -- would ask if you identify

12:45:58 17 what's happening here?

12:45:59 18 A. Right. So this is my player. This is the player

12:46:02 19 system blow-up. And you see if I move my thumb this way,

12:46:07 20 the cone moved that way so we can play it again.

12:46:09 21 MR. MOORE: Let's play it again.

12:46:23 22 A. There's the cone from my player, and as I'm moving my

12:46:28 23 thumb to the left, the cone moves to the left. And when I

12:46:30 24 release, the cone disappears, and this is when I shoot, but

12:46:34 25 that's -- we'll get to that later.

12:46:37 1 Q. (By Mr. Moore) All right. And so --

12:46:37 2 MR. MOORE: Thank you, Mr. Groat, you can go back  
12:46:39 3 to the slides.

12:46:40 4 Q. (By Mr. Moore) So, in your opinion, then, is Element a  
12:46:43 5 of Claims 1 and -- I'm sorry, of Claims 8 and 10 present in  
12:46:47 6 Supercell's Brawl Stars?

12:46:48 7 A. Yes. For Element a, all we need to do is identify the  
12:46:54 8 first touch operation, and the first touch operation, I've  
12:46:55 9 already demonstrated, is what takes place with my right  
12:46:59 10 thumb.

12:46:59 11 Q. Okay. Now, then let's go to the next Element b, what  
12:47:03 12 does this require?

12:47:04 13 A. So Element b requires: Control the display to display  
12:47:08 14 a frame indicative of a shooting effective range in  
12:47:12 15 accordance with a position of the first touch operation.

12:47:18 16 Q. Has the Court entered any claim constructions for words  
12:47:22 17 in these elements?

12:47:23 18 A. Yes.

12:47:23 19 Q. And what are they, please?

12:47:25 20 A. Shooting effective range means range in which a  
12:47:31 21 shooting attack target can be hit and in accordance with  
12:47:35 22 the position of the first touch operation means in response  
12:47:37 23 to and based on the position of the first touch operation.

12:47:39 24 Q. Did you apply the Court's constructions in your  
12:47:46 25 infringement analysis?

12:47:47 1 A. Yes.

12:47:47 2 Q. And why does Supercell infringe Element b with Brawl  
12:47:50 3 Stars?

12:47:50 4 A. So we already saw a little bit of this. The first  
12:47:55 5 touch operation is just me pressing and just moving my --  
12:47:58 6 my thumb. When I press and I move my right thumb, the cone  
12:48:02 7 appears. The cone is the -- the cone meets the language of  
12:48:11 8 the shooting effective range.

12:48:12 9 So the cone that appears from the player -- my  
12:48:14 10 player -- because it's the range in which a shooting attack  
12:48:17 11 can be hit. So in the game, I can attack and I can cause  
12:48:20 12 damage to anything in that white cone.

12:48:23 13 And so that language in the claim that requires  
12:48:30 14 the cone, or requires a shooting effective range, is met by  
12:48:33 15 the cone.

12:48:34 16 And then we need to have the language that in  
12:48:36 17 accordance with the position of the first touch operation,  
12:48:39 18 which the Court construed in response to and based on the  
12:48:43 19 position, and I've shown you how it is based on the  
12:48:47 20 position of my thumb. Because as I move my thumb in the  
12:48:52 21 first touch operation, the cone moves and follows the  
12:48:54 22 movement of my thumb.

12:48:55 23 So, with that, I have shown that I have applied  
12:48:58 24 the Court's claim construction, and the game infringes that  
12:49:03 25 element.

12:49:04 1 Q. All right. And when we looked at the -- the blow-up  
12:49:07 2 and slowed-down video, did that help illustrate this claim  
12:49:10 3 element, as well?

12:49:11 4 A. Yes.

12:49:11 5 Q. All right.

12:49:12 6 MR. MOORE: Could we look at that again real  
12:49:14 7 quickly?

12:49:15 8 Q. (By Mr. Moore) And explain to the jury why what's  
12:49:16 9 shown in that video also shows that Element b is met.

12:49:20 10 A. So, again, the claim just requires that to have -- that  
12:49:28 11 to have the -- the shooting range move in accordance with  
12:49:35 12 the position of the first touch operation. And so the cone  
12:49:37 13 doesn't need to appear where my thumb is. The cone just  
12:49:41 14 needs to move relative to the position of the first touch  
12:49:43 15 operation where my thumb is.

12:49:45 16 So because I drag my thumb left and right and the  
12:49:48 17 cone moves left and right and the cone meets the Court's  
12:49:52 18 claim construction for shooting effective range, because  
12:49:55 19 that's where I can attack a target and a target can take  
12:49:59 20 damage, the combination of both parts of that element have  
12:50:04 21 been met.

12:50:04 22 Q. Do you recall in the opening statement yesterday by  
12:50:07 23 Supercell -- or Supercell's counsel that they argued that  
12:50:10 24 since the -- the cone didn't appear where your thumb is,  
12:50:14 25 that there's no infringement?

12:50:15 1 A. Yes.

12:50:15 2 Q. Do you agree with that?

12:50:17 3 A. No.

12:50:17 4 Q. Why not?

12:50:18 5 A. Because the claim doesn't require the cone to appear

12:50:21 6 where my thumb is. If we go back to the claim language and

12:50:23 7 the Court's claim construction --

12:50:26 8 Q. Sure.

12:50:26 9 MR. MOORE: Could you go, please, to -- I need my

12:50:29 10 glasses -- to 144? I'm sorry. No, it's -- it's about two

12:50:39 11 slides -- I -- I was wrong on that. Sorry, it -- it seems

12:50:43 12 to be 166. The 4s look like 6s.

12:50:50 13 A. Right. So we have a Court's claim construction for

12:50:53 14 shooting effective range, and we have a construction for

12:50:58 15 what it means in accordance with the position.

12:51:00 16 So "in accordance with the position" doesn't mean

12:51:03 17 it has to be exactly where the position is. It says in

12:51:06 18 response to and based on the position. So it is based on

12:51:09 19 my first touch, because as I move my thumb, the cone moves.

12:51:13 20 So the -- the Court's claim construction explains

12:51:16 21 what that means, and the movement of the sum moving and

12:51:22 22 then the cone following it, meets the Court's claim

12:51:25 23 construction. There isn't the requirement that they need

12:51:26 24 to overlap.

12:51:28 25 Q. (By Mr. Moore) Right. Thank you.

12:51:28 1 And -- and by the way, you -- you -- the -- which  
12:51:33 2 brawler are you playing here in your example videos of  
12:51:38 3 Brawl Stars?

12:51:39 4 A. Her name is Shelly.

12:51:41 5 Q. Why did you select Shelly as the brawler to use to  
12:51:44 6 illustrate your testimony of infringement?

12:51:47 7 A. You don't have a choice. That's the first brawler  
12:51:48 8 you -- anybody who's starting the game, they play with  
12:51:51 9 Shelly.

12:51:51 10 Q. Can players then choose different brawlers at other  
12:51:56 11 points in the game?

12:51:56 12 A. Yes.

12:51:57 13 Q. Is it sufficient to show infringement by Brawl Stars to  
12:52:00 14 show -- illustrate your testimony with Shelly as the  
12:52:03 15 opening brawler?

12:52:05 16 A. Yes.

12:52:05 17 Q. And why is that?

12:52:07 18 A. Because you just need to show that there is  
12:52:09 19 infringement in terms of everybody who plays this game has  
12:52:12 20 to play Shelly first. So even though you can level and  
12:52:15 21 once you get to a high enough level, you can pick a  
12:52:18 22 different character, everybody playing the game has to  
12:52:21 23 start out with the character Shelly, and Shelly infringes.  
12:52:26 24 And others also might infringe, but I only analyzed Shelly.

12:52:30 25 Q. And what type of weapon does Shelly use?

12:52:32 1 A. She has the cone and -- kind of like the gun, and she  
12:52:36 2 has a super power.

12:52:39 3 Q. Okay. Thank you.

12:52:42 4 And so, what is your conclusion as to Element 1 --  
12:52:45 5 sorry, 8b and 10b of the '873 patent.

12:52:48 6 A. That they are infringed by Supercell both by the  
12:52:54 7 servers and by the games running on the phones.

12:52:56 8 Q. Let's go to Element c. What does this element require?

12:53:01 9 A. C requires us to identify a second touch operation at  
12:53:06 10 the touch panel as an instruction for an attack when the  
12:53:11 11 frame is displayed by the display.

12:53:15 12 Q. And did the Court apply any claim constructions to this  
12:53:19 13 element?

12:53:19 14 A. Yes.

12:53:21 15 Q. There we go. Is this the construction we saw earlier  
12:53:25 16 for touch operation?

12:53:28 17 A. Yes. So we have to use it again for the second touch  
12:53:29 18 operation, which means operation that involves the user's  
12:53:33 19 finger or other object, such as a stylus, on the touch  
12:53:37 20 panel.

12:53:37 21 Q. And what, in your opinion, is the second touch  
12:53:41 22 operation in Brawl Stars?

12:53:42 23 A. So -- so you saw when I press and hold, I can aim the  
12:53:47 24 cone. And when I release my finger from the display, the  
12:53:50 25 cone fires. So the claim requires an instruction for an

12:53:55 1 attack.

12:53:57 2 The instruction for the attack is when the cone  
12:54:00 3 fires, and it has to be on -- by -- he has to be triggered  
12:54:04 4 by a second touch operation. So me releasing my finger is  
12:54:09 5 that second touch operation.

12:54:11 6 MR. MOORE: Can we show the slowed-down video  
12:54:14 7 again, please, to illustrate that.

12:54:15 8 Q. (By Mr. Moore) And please explain how this video  
12:54:18 9 illustrates that feature?

12:54:19 10 A. So I move my finger, and the cone appears, and then  
12:54:26 11 when you see my finger just a little bit rise above, this  
12:54:30 12 is where the character shoots, and then I put it back on  
12:54:33 13 the screen to then do the first touch operation. So the  
12:54:36 14 moment I lift my finger -- so the release of the touch is  
12:54:41 15 considered a touch operation because it also meets the  
12:54:44 16 Court's claim construction for --

12:54:45 17 Q. Okay.

12:54:45 18 A. -- touch.

12:54:47 19 Q. I was going to ask you that. When you release it,  
12:54:49 20 you're not touching anymore, right?

12:54:51 21 A. Yes.

12:54:51 22 Q. Well, then why is that a touch operation as the Court  
12:54:53 23 has construed it?

12:54:54 24 A. Because if we go back to the Court's construction --

12:54:58 25 MR. MOORE: If we could go back a couple slides.

12:55:00 1 THE WITNESS: One slide.

12:55:01 2 MR. MOORE: One slide, I think. There we go.

12:55:03 3 A. The -- the touch operation says it's an operation that

12:55:06 4 involves the user's finger on the touchscreen. So by me

12:55:11 5 releasing my finger from the screen, that meets the

12:55:15 6 construction of an operation that involves the user's

12:55:17 7 finger.

12:55:18 8 So in computer science, even the lack of something

12:55:21 9 is an operation related to that something. And -- and

12:55:23 10 that's also confirmed in the source code.

12:55:25 11 Q. (By Mr. Moore) And do the touchscreens that -- that

12:55:27 12 this game is played on, do they register when a player

12:55:30 13 releases their finger?

12:55:31 14 A. Yes.

12:55:33 15 Q. Now, have you looked at source code for Brawl Stars, as

12:55:37 16 well, on this element?

12:55:37 17 A. Yes.

12:55:38 18 Q. And we'll get to that in a minute.

12:55:41 19 But what is your ultimate conclusion on Element c?

12:55:44 20 A. That the -- Supercell infringes Element c of Claims 8

12:55:52 21 and 10.

12:55:52 22 Q. All right. And let's go to the last element now of the

12:55:55 23 '873 patent.

12:55:56 24 What does Element d require?

12:55:58 25 A. The game server apparatus includes second circuitry

12:56:04 1 configured to control to attack in accordance with a  
12:56:06 2 display position of the frame when the instruction for the  
12:56:12 3 attack is identified.

12:56:13 4 Q. And so as -- what do these claims require to control  
12:56:16 5 the attack?

12:56:17 6 A. So you need to have the game server apparatus,  
12:56:23 7 including the circuitry, and it's configured to control.

12:56:27 8 So the server has to be involved in whether the  
12:56:34 9 character playing the game can attack or not. And looking  
12:56:37 10 at the source code and looking at testimony, the server  
12:56:39 11 decides if a user can attack or not. And why --

12:56:43 12 Q. That's fine. I was going to ask you a similar  
12:56:46 13 question, which is if -- if you just had a game where the  
12:56:52 14 phone -- the terminal device or the phone controlled the  
12:56:55 15 attack, would that -- would that game infringe or meet the  
12:56:57 16 elements of the '873 patent?

12:56:58 17 A. For this element, it says that the game server  
12:57:01 18 apparatus.

12:57:01 19 Q. Okay.

12:57:02 20 A. So it's specifically saying that the -- that the server  
12:57:04 21 has to be involved. And that's what happens here because  
12:57:07 22 the server is constantly looking to see if your player is  
12:57:10 23 alive or dead.

12:57:11 24 THE COURT: Dr. Akl, please slow down just a  
12:57:14 25 little bit, please.

12:57:15 1 Go ahead, counsel.

12:57:17 2 MR. MOORE: Thank you, Your Honor.

12:57:18 3 Q. (By Mr. Moore) All right. And did you consider any  
12:57:20 4 testimony from witnesses of Supercell in forming your  
12:57:25 5 opinions about whether the Supercell servers control the  
12:57:28 6 attack for Brawl Stars?

12:57:29 7 A. I did.

12:57:29 8 Q. And did you also look at any source code for this  
12:57:33 9 element?

12:57:33 10 A. Yes, I did.

12:57:34 11 Q. Okay. And we'll see that in just a moment.

12:57:36 12 So wrapping up for the '873 patent, could you  
12:57:41 13 summarize your opinions on Supercell's direct infringement?

12:57:43 14 A. Yes. Supercell infringes Claims 8 and 10 of the '873  
12:57:47 15 patent.

12:57:47 16 Q. Thank you.

12:57:48 17 And we're getting very close to the end, but  
12:57:51 18 there's one more -- one more topic on infringement before  
12:57:54 19 we get to the source code.

12:57:55 20 What is your last opinion here, Dr. Akl, with  
12:57:59 21 regard to Supercell's infringement?

12:58:02 22 A. Supercell also indirectly infringes the claims by  
12:58:07 23 encouraging, instructing, teaching, and aiding users to  
12:58:11 24 directly infringe.

12:58:12 25 Q. All right. What is indirect infringement?

12:58:16 1 A. So indirect infringement, it's a legal principle where  
12:58:22 2 somebody is liable for indirect infringement if -- if  
12:58:25 3 someone infringes but you tell them to infringe or you  
12:58:28 4 teach them how to infringe or you contribute to their  
12:58:31 5 infringement or you induce infringement, that's called  
12:58:34 6 indirect infringement is my understanding.

12:58:36 7 Q. And how have -- in your opinion, how has Supercell  
12:58:40 8 indirectly infringed the claims of the five patents that  
12:58:42 9 we've discussed?

12:58:44 10 A. So Supercell has indirectly infringed because Supercell  
12:58:48 11 advertises. They have commercials and surveys and videos  
12:58:53 12 that teach users how to play the game.

12:58:56 13 Also, when you start the game, there are tutorials  
12:59:00 14 in the game that teach users how to play that are written  
12:59:03 15 by Supercell.

12:59:04 16 Q. And what materials did you review to reach your  
12:59:07 17 conclusions on indirect infringement?

12:59:09 18 A. I looked at testimony by Supercell employees, I looked  
12:59:13 19 at documents, I looked at their social media content --  
12:59:19 20 by -- I mean, Supercell's, the tutorials in the games  
12:59:23 21 themselves. As I was playing the games, I walked through  
12:59:25 22 those tutorials. And Supercell's websites.

12:59:27 23 Q. And could you give us a couple of examples of the type  
12:59:31 24 of things that Supercell does to teach and -- and advertise  
12:59:34 25 its games to its users?

12:59:37 1 A. Yes. So, for example, there are YouTube videos where  
12:59:41 2 you have players that Supercell advertises help you  
12:59:49 3 understand the game or commercials that Supercell has put  
12:59:53 4 out where a -- a person -- a Supercell employee or somebody  
12:59:56 5 representing Supercell walks through and teaches you how to  
01:00:01 6 play the game.

01:00:03 7 There are -- in addition to the tutorials, there  
01:00:06 8 are content and videos and ads, all that are provided by  
01:00:12 9 Supercell that are used and teaches other to infringe.

01:00:17 10 Q. And does there have to be any direct infringement by  
01:00:20 11 anyone else in order for Supercell to be responsible for  
01:00:23 12 indirect infringement?

01:00:24 13 A. Yes.

01:00:24 14 Q. And in this case, what is the evidence of direct  
01:00:27 15 infringement by someone else that would cause that to  
01:00:31 16 occur?

01:00:31 17 A. So the evidence that we walked through, again, is the  
01:00:34 18 same evidence. So whether a user playing the game directly  
01:00:40 19 infringes, but if that user is being instructed and taught  
01:00:43 20 to play the game by Supercell, then Supercell indirectly  
01:00:47 21 infringes and is liable.

01:00:48 22 Q. And in your opinion, would users playing the games  
01:00:51 23 carry out the -- the steps of the claim elements, as well?

01:00:55 24 A. Yes.

01:00:55 25 Q. And would they -- is that true for all of the claims

01:00:58 1 that we've looked at yesterday and today?

01:01:00 2 A. Yes.

01:01:00 3 Q. And would users playing each of the three Supercell

01:01:06 4 games that we've discussed here be using the game system

01:01:11 5 that runs those games when they do that?

01:01:13 6 A. Yes. They would be -- even though they're playing the

01:01:17 7 game on their phone, they have to be connected to the

01:01:19 8 Internet. They have to be connected to Supercell's server.

01:01:22 9 They have to have downloaded the game from the App Store or

01:01:27 10 the -- the iOS Store or the Android Store. And they have

01:01:33 11 to be connected while they're playing the game to

01:01:36 12 Supercell's servers.

01:01:37 13 Q. And do users control any aspects of the system for

01:01:42 14 these three games when they're actually performing their

01:01:45 15 actions in the games?

01:01:46 16 A. They just control the UI, but the game itself is always

01:01:51 17 controlled by the server. And anything a user does is

01:01:56 18 communicated through the server and reflected on any other

01:02:00 19 player's screen by the server.

01:02:02 20 Q. Do users who play these games put the server and the

01:02:05 21 rest of the system into motion by deciding to play them?

01:02:09 22 A. Yes.

01:02:09 23 Q. Okay. And do users get any benefits out of playing

01:02:13 24 Supercell's three accused games?

01:02:14 25 A. Yes. Hopefully, they have fun.

01:02:17 1 Q. All right. All right. Now -- so then what is your --  
01:02:21 2 oh, I'm sorry, before I go to that, do you have an example  
01:02:23 3 of a claim that you want to talk about for direct  
01:02:25 4 infringement here?

01:02:26 5 A. Yes.

01:02:27 6 Q. And what -- what claim is this, and please describe how  
01:02:30 7 that would work for indirect infringement by Supercell.

01:02:33 8 A. So this is Claim 1 of the '481 battle patent which  
01:02:40 9 starts out with a terminal device. And so the terminal  
01:02:42 10 device is the user's phone.

01:02:46 11 But as I've been explaining today, that the user  
01:02:48 12 on their phone, they would have downloaded the Supercell  
01:02:52 13 software. The phone has to be connected to the server.  
01:02:54 14 And the server communicates with the player and  
01:02:59 15 communicates with the other player or more than one player  
01:03:03 16 that the phone -- that the user is playing with.

01:03:06 17 So even though a user is playing the game, there  
01:03:09 18 is infringement either -- there is -- the game is infringed  
01:03:14 19 by the user directly and indirectly by Supercell or  
01:03:19 20 directly by Supercell as we looked at.

01:03:21 21 Q. All right. And so, in conclusion, what types of  
01:03:24 22 infringement is Supercell responsible for for the five  
01:03:27 23 patents in this case?

01:03:28 24 A. So Supercell is responsible for both direct and  
01:03:33 25 indirect infringement.

01:03:34 1 Q. Thank you.

01:03:35 2 Now, there's a couple other small topics that I  
01:03:38 3 want to hit quickly, and then we'll move on to source code.

01:03:42 4 Are you familiar with an issue that Supercell has  
01:03:44 5 raised regarding non-infringing alternatives?

01:03:46 6 A. Yes.

01:03:46 7 Q. What are non-infringing alternatives?

01:03:48 8 A. So Supercell alleges that some of what I'm going to  
01:03:57 9 mention in a second are non-infringing alternatives, which  
01:04:00 10 means it's an alternative to whatever is happening in the  
01:04:04 11 game and it also does not infringe.

01:04:06 12 Q. And so is this something they could have done instead  
01:04:09 13 of what they have done?

01:04:10 14 A. Yes.

01:04:11 15 Q. And, to your knowledge, have they done any of this?

01:04:13 16 A. No.

01:04:14 17 Q. Well, what type of things have they argued, and what is  
01:04:18 18 your -- your response to those?

01:04:20 19 A. So, for example, Supercell's expert for Clash of Clans  
01:04:25 20 said that, well, Supercell can just remove the copy layout,  
01:04:32 21 and he's claiming that that's a non-infringing alternative.

01:04:35 22 Q. Is it?

01:04:35 23 A. No, because it's not an alternative. So if you remove  
01:04:40 24 a feature, you don't infringe. But that's not considered a  
01:04:43 25 non-infringing alternative, because removing a feature is

01:04:46 1 not an alternative because you -- you have to -- you're  
01:04:50 2 removing a feature. You're not providing a different way  
01:04:53 3 of doing something that gives you the same result but in a  
01:04:58 4 non-infringing way.

01:04:58 5 Q. And has Supercell removed the copy layout feature from  
01:05:01 6 Clash of Clans?

01:05:02 7 A. Not to my knowledge.

01:05:03 8 Q. Now, could -- what are your responses to the other  
01:05:07 9 non-infringing alternatives that we're showing here on this  
01:05:09 10 slide?

01:05:09 11 A. That they all either are not alternatives, or they  
01:05:16 12 would still infringe, and I have some examples.

01:05:18 13 Q. Could you give the example of the one in the picture  
01:05:20 14 here?

01:05:21 15 A. Yes. So this is for Brawl Stars. So we saw for Brawl  
01:05:26 16 Stars that there is the cone. And the cone has a solid  
01:05:30 17 line. This is -- I put it here.

01:05:32 18 One of the arguments that Supercell says -- or  
01:05:37 19 their expert says is that we can change -- or Supercell can  
01:05:42 20 change the cone from being like a fixed line to a dashed  
01:05:47 21 line. And then that would be a non-infringing alternative.

01:05:49 22 Q. Do you agree that if they changed the cone from solid  
01:05:53 23 to dashed lines, they wouldn't infringe anymore?

01:05:55 24 A. No, because they -- they -- whether you have a solid  
01:05:58 25 line or a dashed line, you are still meeting the Court's

01:06:02 1 construction of the shooting range. And so this would not

01:06:06 2 be a non-infringing alternative. It's an alternative

01:06:09 3 because you've changed something, but it's not a

01:06:11 4 non-infringing alternative because you still infringe.

01:06:14 5 Q. And has Supercell changed the cone into dashed lines?

01:06:18 6 A. No, not to my knowledge.

01:06:19 7 Q. All right. Let's go up two lines from there to Clash

01:06:23 8 Royale. What is Supercell saying they could have done for

01:06:26 9 Clash Royale to get out of infringement?

01:06:27 10 A. They -- Supercell's expert said that we can add points

01:06:37 11 to the Elixir -- this is the number at the bottom, the --

01:06:38 12 your potion -- at different intervals.

01:06:42 13 Q. So instead of what -- what -- you said I think earlier

01:06:45 14 what they do now is every two seconds?

01:06:47 15 A. Correct. So -- so his non- -- his alleged

01:06:51 16 non-infringing alternative is if they add more or less at

01:06:54 17 different points in time.

01:06:55 18 Q. And is that a -- a non-infringing alternative?

01:07:00 19 A. No.

01:07:00 20 Q. Why not?

01:07:01 21 A. Because even if you add more or less at different

01:07:05 22 points in time, it doesn't change the infringing aspect

01:07:07 23 that the Elixir is growing. You're going from 1, 2, 3, and

01:07:12 24 the mechanics would be the same. Once you hit an upper

01:07:15 25 limit, you can play a card. And once the you play the

01:07:18 1 card, the card is still deducted. So that's not a  
01:07:22 2 non-infringing alternative.

01:07:22 3 Q. Thank you.

01:07:23 4 Okay. One other short topic here before we get to  
01:07:27 5 source code. Have you compared some of the issued claims  
01:07:30 6 from two of the patents to the published versions of those  
01:07:35 7 claims that were published before the patent was actually  
01:07:38 8 granted?

01:07:38 9 A. Yes.

01:07:39 10 Q. And why did you do that?

01:07:41 11 A. So I did that because my understanding that this is  
01:07:43 12 something that's relevant to when damages can start. So if  
01:07:48 13 we look at the patent and we look at the application -- so  
01:07:51 14 here for the '137 patent, the application number is  
01:08:00 15 2016/0051898. I was asked to look at the claims because of  
01:08:07 16 the impact of my analysis for when damages can start.

01:08:09 17 Q. And which claims did you compare between those two  
01:08:14 18 documents?

01:08:14 19 A. So I looked at Claim 1 and Claim 11.

01:08:16 20 Q. And what is your conclusion about those claims?

01:08:21 21 A. So what I'm showing you on this screen is in the  
01:08:25 22 application, you have on the left Claim 1 and Claim 11,  
01:08:29 23 which Claim 11 is a dependent claim -- the server according  
01:08:32 24 to Claim 1. And if we look at the claim in the '137 in the  
01:08:37 25 published patent, they are very, very similar.

01:08:42 1 Q. Are they substantially similar?

01:08:44 2 A. Yes.

01:08:44 3 Q. And did you highlight the key differences in yellow?

01:08:47 4 A. Yes. So the only difference is the -- both the

01:08:52 5 independent and the dependent claim in the publication form

01:08:58 6 Claim 1. And there's one word added that's "and," instead

01:09:05 7 of splitting it into two.

01:09:06 8 Q. Okay. Did you do the same analysis for the '655

01:09:10 9 donation patent?

01:09:11 10 A. I did.

01:09:11 11 Q. All right. Let's look at that. And what is your

01:09:12 12 conclusion about -- well, first of all, what did you

01:09:14 13 compare for this patent?

01:09:15 14 A. So I compared Claim 1 in the '655 donation patent with

01:09:21 15 the -- with its application 2015/0256596.

01:09:28 16 Q. Which claims did you compare?

01:09:30 17 A. Claim 1.

01:09:30 18 Q. And what is your conclusion from that comparison?

01:09:33 19 A. So my conclusion is, again, they're very similar.

01:09:39 20 The -- the differences in the application, they were using

01:09:45 21 "an"; so an object, an object. And in the patent, it uses

01:09:50 22 first object and second object. So instead of using the

01:09:55 23 article "an," it just said first and second.

01:09:59 24 Q. Are these claims substantially similar to one another

01:10:02 25 as published and issued?

01:10:03 1 A. Yes.

01:10:03 2 Q. All right.

01:10:04 3 MR. MOORE: Your Honor, at this time, I would like  
01:10:06 4 to request permission to show Dr. Akl some of the source  
01:10:09 5 code that he looked at. However, there's some  
01:10:12 6 confidentiality issues I wanted to raise for the Court.

01:10:15 7 THE COURT: Are you asking the Court to seal the  
01:10:18 8 courtroom?

01:10:18 9 MR. MOORE: Yes, if you would, Your Honor. It's  
01:10:19 10 Supercell's source code, and I'm just assuming that they're  
01:10:22 11 going to want you to do that.

01:10:24 12 THE COURT: All right. Then at counsel's request,  
01:10:26 13 I'll order the courtroom sealed.

01:10:27 14 Those present not subject to the protective order  
01:10:29 15 in this case should excuse themselves and remain outside  
01:10:34 16 until the courtroom is unsealed.

01:10:42 17 (Courtroom sealed.)

01:10:42 18 (This portion of the transcript is sealed

01:10:42 19 and filed under separate cover as

01:10:42 20 Sealed Portion No. 1.)

01:48:07 21 (Courtroom unsealed.)

01:48:07 22 THE COURT: All right. We're unsealed, for the  
01:48:07 23 record. Let's proceed.

01:48:07 24 Q. (By Mr. Sacksteder) All right. I do want to talk  
01:48:09 25 about source code now, Dr. Akl, briefly and we'll come back

01:48:11 1 to it later. But you --

01:48:13 2 MR. SACKSTEDER: Can we put up Dr. Akl's Slide

01:48:16 3 No. 10, please?

01:48:21 4 Q. (By Mr. Sacksteder) I think this is a slide that you

01:48:23 5 testified about yesterday, correct?

01:48:24 6 A. Yes.

01:48:25 7 Q. And you are showing that there is source code that is

01:48:31 8 written to create executable code that runs on the game

01:48:34 9 that's on the phone and also on the server, correct?

01:48:38 10 A. Yes.

01:48:38 11 Q. All right. And you testified -- I believe you said,

01:48:45 12 whatever is happening, the definitive condition is on the

01:48:49 13 Supercell server, correct?

01:48:50 14 A. Yes.

01:48:51 15 Q. All right. And you went through some source code just

01:48:53 16 now. We're going to look at some of it later, but you went

01:48:56 17 through some source code regarding the '137 and the '481

01:48:59 18 patent, correct?

01:49:00 19 A. Yes.

01:49:01 20 Q. And -- and that source code is not on the Supercell

01:49:04 21 server, correct?

01:49:06 22 A. Yes.

01:49:07 23 Q. It is source code that runs on the phone, not on the

01:49:11 24 server, correct?

01:49:11 25 A. Yes.

01:49:13 1 Q. And you looked at some code for the Brawl Stars game,  
01:49:21 2 correct?  
01:49:21 3 A. Yes.  
01:49:22 4 Q. And that also was code where you were asked about  
01:49:27 5 whether you could tell what happens on the server from that  
01:49:30 6 code, right?  
01:49:31 7 A. Yes.  
01:49:31 8 Q. But the code was actually code that does not run on the  
01:49:34 9 server, correct?  
01:49:38 10 A. I disagree with that characterization.  
01:49:40 11 Q. So the code was a C++ file, correct?  
01:49:44 12 A. Yes.  
01:49:44 13 Q. And -- and is it your testimony that that code runs  
01:49:48 14 on -- is executed by a server?  
01:49:50 15 A. No. That question, the answer is no.  
01:49:54 16 Q. All right. The -- so that code is not executed by the  
01:49:56 17 server; it's executed on the phone, correct?  
01:49:58 18 A. Yes.  
01:49:59 19 Q. And you used that to try to tell the jury what happens  
01:50:04 20 on the server, correct?  
01:50:05 21 A. Yes.  
01:50:06 22 Q. You don't really rely on any code that actually  
01:50:09 23 executes on the Supercell server, do you?  
01:50:12 24 A. Correct.  
01:50:15 25 MR. SACKSTEDER: Can we put up Claim 2 of the '137

01:50:25 1 patent?

01:50:25 2 Q. (By Mr. Sacksteder) Some of the claims in this case,

01:50:36 3 Dr. Akl, recite things that the server does, right?

01:50:37 4 A. Yes.

01:50:38 5 Q. And one of those is Claim 2 of the '137 patent,

01:50:40 6 correct?

01:50:40 7 A. Yes.

01:50:40 8 Q. And it recites specific things that happen in a control

01:50:46 9 unit on the server, correct?

01:50:48 10 A. Yes.

01:50:48 11 Q. And it removes the game content selected by the player

01:50:52 12 from the first field, for example, correct?

01:50:56 13 A. Yes.

01:50:57 14 Q. And you did not rely on any source code that executes

01:51:00 15 on the Supercell server in order to come up with your

01:51:06 16 opinion about that, correct?

01:51:06 17 A. Yes.

01:51:07 18 Q. All of the claims or all of the independent claims --

01:51:20 19 strike that.

01:51:21 20 All of the dependent claims of the '137 patent

01:51:23 21 recite a server and things that happen on the server,

01:51:26 22 correct?

01:51:26 23 A. I'll take your word for it.

01:51:29 24 Q. All right. And in all those, you mentioned millions of

01:51:35 25 lines of code that you and the other two reviewers looked

01:51:38 1 at to analyze the code, correct?

01:51:42 2 A. Yes.

01:51:42 3 Q. And of all those millions of lines of code, you don't

01:51:46 4 rely on a single one that actually happens on the server,

01:51:49 5 right, that actually is executed on the server?

01:51:53 6 A. Yes.

01:52:00 7 Q. Let's talk about the '873 patent first.

01:52:02 8 You showed a graphic of Shelly, I believe?

01:52:06 9 A. Yes.

01:52:06 10 Q. And Shelly is a brawler, right?

01:52:10 11 A. Yes.

01:52:10 12 Q. And Shelly is one of more than 30 brawlers in Brawl

01:52:15 13 Stars, correct?

01:52:16 14 A. Yes.

01:52:16 15 Q. And Shelly has a shotgun, right?

01:52:20 16 A. Yes.

01:52:20 17 Q. And Shelly uses that shotgun as her weapon, right?

01:52:25 18 A. Yes.

01:52:25 19 Q. And you walked through and explained your opinions

01:52:28 20 about the cone that emanates from Shelly sometimes in the

01:52:33 21 game, right?

01:52:34 22 A. Yes.

01:52:35 23 Q. All right. You did not do a similar analysis for any

01:52:39 24 of the other brawlers in the game, correct?

01:52:42 25 A. Yes.

01:52:42 1 Q. And some of those other brawlers don't even shoot  
01:52:47 2 anything, right?

01:52:48 3 A. Yes.

01:52:48 4 Q. And some of those other brawlers shoot different  
01:52:53 5 things, correct?

01:52:53 6 A. Yes.

01:52:53 7 Q. And some of those other brawlers that shoot different  
01:52:59 8 things use things besides the cone on the screen, right?

01:53:02 9 A. Yes.

01:53:03 10 Q. They are visualized differently, correct?

01:53:05 11 A. Yes.

01:53:06 12 Q. But the only one you looked at, the only one you  
01:53:13 13 analyzed was Shelly?

01:53:17 14 A. Yes.

01:53:17 15 Q. I want to talk to you about a couple of things relating  
01:53:20 16 to the '873 patent.

01:53:22 17 MR. SACKSTEDER: Can we put up DX-71, Mr. Smith?

01:53:27 18 Q. (By Mr. Sacksteder) We are talking here about the  
01:53:37 19 first touch operation. Quite a bit of discussion of that  
01:53:41 20 during your testimony, correct?

01:53:41 21 A. Yes.

01:53:42 22 Q. And I thought I heard you say to the jury this morning,  
01:53:48 23 when I press the red button, I get the cone. Is that  
01:53:53 24 something you intended to say?

01:53:54 25 A. I -- I think I might have misspoken. When -- I don't

01:54:02 1 know if you want me to correct myself.

01:54:04 2 Q. Well, we can go through it. And -- and I thought later  
01:54:06 3 you said, when I press and hold, I can aim the code -- the  
01:54:10 4 cone. Was that your recollection --

01:54:10 5 A. When I --

01:54:14 6 Q. -- of what you said?

01:54:15 7 A. -- when I -- when I press -- when you press the screen,  
01:54:18 8 you get the red button. So the button exists once you  
01:54:22 9 press the screen. And when you hold your finger on the  
01:54:25 10 screen and you drag, the cone moves.

01:54:28 11 Q. All right. So if you just press your finger on to the  
01:54:31 12 screen, when you first touch it, no cone until you drag  
01:54:37 13 your finger; is that correct?

01:54:38 14 A. Yes.

01:54:40 15 Q. And if you touch the screen and then just take your  
01:54:45 16 finger off, no cone is shown, correct?

01:54:48 17 A. Correct.

01:54:48 18 Q. If you touch the screen and take your finger off,  
01:54:54 19 Shelly fires a shotgun shell, but there is no cone  
01:54:57 20 illustrated on the screen, correct?

01:54:59 21 A. I think so.

01:54:59 22 Q. So in order to show the cone, you have to first touch  
01:55:07 23 the screen, and then you have to slide your finger  
01:55:10 24 somewhere else on the screen, correct?

01:55:13 25 A. Yes. The -- the moment you drag, the cone appears.

01:55:17 1 Q. And the claim requires a first touch operation and a  
01:55:24 2 second touch operation, correct?  
01:55:25 3 A. Yes.  
01:55:25 4 Q. And is it your testimony that the first touch operation  
01:55:30 5 is touching the screen and then moving your finger on the  
01:55:33 6 screen?  
01:55:33 7 A. Yes.  
01:55:36 8 Q. And if the jury doesn't agree with you that that is one  
01:55:43 9 touch operation, then the jury should find that the claim  
01:55:45 10 is not infringed, correct?  
01:55:47 11 A. That's my understanding.  
01:55:49 12 Q. Was it your testimony that the touching the screen and  
01:55:58 13 then sliding your finger on the screen, that's all one  
01:56:01 14 thing? That's all one operation?  
01:56:02 15 A. Yes. That meets the Court's claim construction for  
01:56:04 16 first touch operation.  
01:56:05 17 Q. You also, I think, identified a double tap as something  
01:56:10 18 that could be a single operation?  
01:56:11 19 A. That was an example not related to the patent.  
01:56:16 20 Q. I understand, sir. But -- but you testified, I  
01:56:20 21 believe, if I understood you correctly, that a double tap  
01:56:24 22 is a -- could be a single touch operation?  
01:56:31 23 A. Yes.  
01:56:35 24 Q. That is not consistent with what you said in your  
01:56:38 25 deposition, is it?

01:56:39 1 A. I don't remember.

01:56:44 2 Q. You testified in your deposition that you cannot divide  
01:56:48 3 the double tap and say that the second part of the double  
01:56:52 4 tap meets the claim language for a second touch operation,  
01:56:56 5 correct -- or a first touch operation?

01:56:58 6 A. I think the context is different. I agree with what I  
01:57:06 7 said in my deposition. I don't think it contradicts what  
01:57:12 8 I'm saying.

01:57:12 9 Q. You would disagree that a double tap could be a first  
01:57:15 10 touch operation, correct?

01:57:15 11 A. A double tap is a single operation. So it could be a  
01:57:26 12 first tap. It could be -- it could meet the language for a  
01:57:31 13 first touch.

01:57:32 14 MR. SACKSTEDER: Can we play from Dr. Akl's  
01:57:39 15 deposition Page 359, Lines 13 to 20?

01:58:08 16 (Videoclip played.)

01:58:11 17 QUESTION: Let's move on to 505 -- actually, 506.  
01:58:20 18 And you take issue with Dr. Zagal's opinion that a double  
01:58:32 19 tap on the screen constitutes a first touch operation? Is  
01:58:38 20 that an accurate description of your opinion?

01:58:49 21 ANSWER: I disagree that the double tap is a first  
01:58:55 22 touch operation, as recited by the claim.

01:58:57 23 (Videoclip ends.)

01:58:58 24 Q. (By Mr. Sacksteder) When you said that, Dr. Akl, you  
01:59:00 25 were trying to distinguish a prior art reference that

01:59:05 1 Supercell's expert was relying on to assert that the patent  
01:59:10 2 is invalid, correct?

01:59:19 3 A. Possibly.

01:59:21 4 Q. So you understand that you were supposed to apply the  
01:59:25 5 claim the same way for invalidity and infringement,  
01:59:27 6 correct?

01:59:27 7 A. Yes.

01:59:29 8 Q. Going back to Demonstrative DX-7-2, there is a -- and  
01:59:44 9 we talked about it -- or you talked about it during your  
01:59:47 10 testimony -- there's a claim element talking about control  
01:59:52 11 the display to display a frame indicative of a shooting  
01:59:58 12 effective range in accordance with -- in accordance with  
02:00:00 13 the position of the first touch operation. You've talked  
02:00:01 14 about that, correct?

02:00:02 15 A. Yes.

02:00:03 16 Q. All right. And you also talked about the Court's  
02:00:08 17 construction of, in accordance with a position of the first  
02:00:12 18 touch operation, and that it means in response to and based  
02:00:17 19 on the position of the first touch operation, correct?

02:00:19 20 A. Yes.

02:00:23 21 Q. So let's look at Brawl Stars for a second.

02:00:27 22 This is DX-3, and I think this is from Dr. Zagal's  
02:00:30 23 videos, but it's similar to yours. There are two joysticks  
02:00:34 24 in Brawl Stars, correct?

02:00:35 25 A. Those are my hands.

02:00:42 1 Q. Well, I'm -- I'm referring actually to the red button  
02:00:45 2 and the blue button.

02:00:47 3 A. Okay.

02:00:47 4 Q. Is -- is that something that you could call a joystick?

02:00:51 5 A. Yes. It's a virtual controller.

02:00:53 6 Q. Right. It's an analogy to the joystick we used to have  
02:00:59 7 on the home video games when we were a little bit younger,  
02:01:03 8 correct?

02:01:03 9 A. Yes.

02:01:03 10 Q. And the one on the left controls the movement of the  
02:01:09 11 brawler, right?

02:01:09 12 A. Yes.

02:01:11 13 Q. You can see that it has up and down and side to side  
02:01:14 14 arrows, right?

02:01:15 15 A. Yes.

02:01:16 16 Q. And the other one has sort of a little logo there  
02:01:21 17 showing a -- a target, and that's the one that controls  
02:01:25 18 where the cone goes, right?

02:01:27 19 A. Yes.

02:01:28 20 Q. So it is not your opinion that anything that is done  
02:01:37 21 with the blue joystick practices any element of the claims  
02:01:41 22 of the '873 patent, correct?

02:01:44 23 A. Correct.

02:01:45 24 Q. The cone always has its pointy end at the brawler,  
02:01:55 25 right? Whenever it's shown, it -- it ends at the brawler,

02:01:58 1 right?

02:01:58 2 A. It starts at the brawler.

02:02:02 3 Q. Yeah. Okay. There -- there's an angle there that's at

02:02:07 4 the brawler, and then the rounder end is out away from the

02:02:12 5 brawler, correct?

02:02:13 6 A. Yes.

02:02:13 7 Q. And that cone is always touching the brawler, right?

02:02:18 8 A. Yes, it's the -- your player.

02:02:20 9 Q. And where the brawler is, is controlled by the blue

02:02:24 10 joystick and not the red joystick, correct?

02:02:27 11 A. Yes.

02:02:32 12 MR. SACKSTEDER: Can we --

02:02:44 13 Q. (By Mr. Sacksteder) So the location of where you touch

02:02:46 14 the screen has no relation to where the enemy character is,

02:02:49 15 right?

02:02:49 16 A. I disagree in part with what you're saying.

02:02:58 17 Q. Well, when you touch the screen, the red button

02:03:02 18 appears, right?

02:03:10 19 A. That's correct.

02:03:11 20 Q. And it does not have anything to do with where the

02:03:15 21 other brawlers are besides your brawler, correct?

02:03:20 22 A. Yes.

02:03:46 23 MR. SACKSTEDER: Let's go to DDX-77, please.

02:03:51 24 Q. (By Mr. Sacksteder) This is a slide from your

02:03:53 25 presentation, correct?

02:03:55 1 A. Yes.

02:03:55 2 Q. And it discusses Supercell's asserted non-infringing

02:03:59 3 alternatives, right?

02:03:59 4 A. Yes.

02:04:00 5 Q. And you referenced the screenshot in the lower right

02:04:08 6 and criticized that, correct?

02:04:11 7 A. Yes.

02:04:12 8 Q. All right. So if what you see in the screenshot there

02:04:21 9 still uses the elements of the claim, it's your opinion

02:04:26 10 that it still infringes, right?

02:04:28 11 A. Yes.

02:04:28 12 Q. And if a prior art reference uses that, then it would

02:04:34 13 invalidate the patent, right?

02:04:38 14 A. If used in exactly the same way, that is correct.

02:04:45 15 MR. SACKSTEDER: Can we show the next video,

02:04:48 16 Mr. Smith?

02:04:55 17 MR. MOORE: Your Honor, I'm going to have to make

02:04:57 18 an objection to the use of this video. This is not one of

02:05:00 19 the asserted prior art references. They dropped it.

02:05:03 20 THE COURT: So your objection is --

02:05:08 21 MR. MOORE: Relevancy and prejudice. It's not

02:05:11 22 prior art in the case that they're asserting at trial.

02:05:14 23 THE COURT: Do you have a response,

02:05:16 24 Mr. Sacksteder?

02:05:16 25 MR. SACKSTEDER: Yes, Your Honor. This is a -- a

02:05:19 1 concept that Dr. Akl has previously said doesn't practice  
02:05:22 2 the limitations. I'm just trying to show that if that  
02:05:25 3 doesn't practice, then neither does the non-infringing  
02:05:29 4 alternative.

02:05:29 5 THE COURT: I'll overrule the objection.

02:05:36 6 MR. SACKSTEDER: All right. So let's play the  
02:05:38 7 video, Mr. Smith, please.

02:06:02 8 Q. (By Mr. Sacksteder) That's from Angry Birds, the video  
02:06:07 9 game, correct?

02:06:08 10 A. Yes.

02:06:08 11 Q. And Angry Birds is a video game that is well-known and  
02:06:13 12 was -- predicated the '873 patent?

02:06:15 13 A. I believe so.

02:06:21 14 MR. SACKSTEDER: You can take it down, Mr. Smith.

02:06:26 15 THE COURT: If you're going to use that for a  
02:06:29 16 non-infringement purpose, that's fine. But sounds like you  
02:06:32 17 told me you were going to use it for non-infringement and  
02:06:34 18 then asserted it for invalidity.

02:06:35 19 MR. SACKSTEDER: I'm not asserting it for  
02:06:37 20 invalidity, Your Honor. I'm just trying to show that -- we  
02:06:40 21 have to play by the same rules for -- for both.

02:06:42 22 THE COURT: Well, I understand that, but the  
02:06:45 23 purposes matter, and you told me that you were only going  
02:06:48 24 to use it in comparison in dealing with the  
02:06:51 25 non-infringement issue, and then the questions about it

02:06:54 1 existed previously and was known in the art, those don't go  
02:06:57 2 to non-infringement. They strictly go to invalidity.

02:07:01 3 MR. SACKSTEDER: I apologize, Your Honor.

02:07:01 4 THE COURT: Well, let's go forward.

02:07:03 5 MR. SACKSTEDER: All right. Thank you,  
02:07:05 6 Your Honor.

02:07:05 7 Q. (By Mr. Sacksteder) Moving on to the '655 patent,  
02:07:08 8 Dr. Akl.

02:07:09 9 You showed some things about chests in your  
02:07:19 10 discussion of the '655 patent?

02:07:21 11 A. Yes.

02:07:22 12 Q. And those are chests in Clash Royale, correct?

02:07:25 13 A. Yes.

02:07:25 14 Q. And those are things that are not chests -- those --  
02:07:31 15 those aren't covered by the patent claims, right?

02:07:35 16 A. I don't understand the question.

02:07:36 17 Q. You aren't asserting that those chests infringe any  
02:07:41 18 claim of the '655 patent, correct?

02:07:47 19 A. I'm not sure if I can agree or disagree because I need  
02:07:52 20 more context.

02:07:53 21 Q. Have you ever made any -- offered any opinion that  
02:07:58 22 there's any infringement by the -- any of the chests in any  
02:08:03 23 of the games or Clash Royale of any of the patents that are  
02:08:06 24 asserted?

02:08:09 25 A. I -- I used this chest to show how you get content. So

02:08:15 1 I'm not sure exactly the scope of your question. It makes  
02:08:17 2 it difficult to answer yes or no.

02:08:19 3 Q. But you aren't saying that the use of the chests  
02:08:21 4 infringes anything?

02:08:22 5 A. The use of the chests gives you possessions that the  
02:08:28 6 claim requires. It's an example of getting possessions.

02:08:32 7 Q. And the '655 patent, as you discuss it with regard to  
02:08:35 8 the Clash Royale game, is about how you get upgraded cards,  
02:08:47 9 right?

02:08:47 10 A. I disagree.

02:08:50 11 Q. The -- well, your -- I thought your testimony was that  
02:08:54 12 the second object that was received by the recipient is a  
02:09:00 13 card that is upgraded; is that correct?

02:09:04 14 A. That's one benefit. That's an example of a benefit.

02:09:09 15 Q. There are other ways to upgrade cards besides having a  
02:09:16 16 card given to a player, correct?

02:09:19 17 A. Yes.

02:09:19 18 Q. Do you have that -- you went through the list of, you  
02:09:22 19 know, sort of 0 out of 800, you need to hit a certain  
02:09:25 20 number of cards that you have; is that correct?

02:09:28 21 A. Yes.

02:09:28 22 Q. Those don't all have to be donated, right?

02:09:32 23 A. Correct.

02:09:32 24 Q. In fact, none of them could be donated. You could buy  
02:09:38 25 them, or you could win them in battles. You could get them

02:09:45 1 out of chests. All those things are ways you could get  
02:09:48 2 cards, correct?

02:09:49 3 A. Yes.

02:09:49 4 Q. And donating a card is just one more way, correct?

02:09:52 5 A. Yes, it's an easy way.

02:09:53 6 Q. And if a player reaches the threshold number of cards

02:10:04 7 with -- by buying them, getting them through chests,

02:10:10 8 winning them, but not receiving the last card that gives

02:10:14 9 you the right number, then there's no infringement of any

02:10:18 10 asserted claim of the '655, right?

02:10:22 11 A. Correct.

02:10:31 12 MR. SACKSTEDER: Let's look at DDX-82.

02:10:34 13 Q. (By Mr. Sacksteder) This is Claims 1 and 7 of --  
02:10:45 14 actually 1c and 7c of the '655 patent.

02:10:49 15 And there is a requirement for selecting a first  
02:10:57 16 object by the first user and selecting a second user who is  
02:11:01 17 going to receive that first object, correct?

02:11:05 18 A. Yes.

02:11:08 19 Q. I just want to make sure we're clear because we walked  
02:11:11 20 through the process, and I want to make sure that we all  
02:11:13 21 understand it.

02:11:16 22 MR. SACKSTEDER: Can we pull up DDX-83, Mr. Smith?  
02:11:22 23 Right.

02:11:22 24 Q. (By Mr. Sacksteder) I believe you showed this screen  
02:11:25 25 in your direct testimony, correct?

02:11:30 1 A. I disagree. I showed the screen, but not for -- this  
02:11:33 2 is the beginning, but not for meeting that limitation.

02:11:36 3 Q. I wasn't trying to say that. I apologize.

02:11:39 4 This screen that you showed is on the phone of the  
02:11:47 5 person who's requesting the card, right?

02:11:50 6 A. Yes.

02:11:52 7 Q. So if that person wants to get a card in Clash Royale,  
02:11:58 8 that person taps on one of those cards and asks a clan  
02:12:05 9 member to provide that card, correct?

02:12:07 10 A. This screen is to create your wish list. So this is  
02:12:10 11 how I select the card that I want. That's not related to  
02:12:13 12 the claim.

02:12:13 13 Q. It -- it says select a card -- it says select card to  
02:12:18 14 request, correct?

02:12:19 15 A. Yes. But I did not use the screen to meet the claim  
02:12:22 16 limitation, which I think what you were asking me.

02:12:27 17 MR. SACKSTEDER: Move to strike as non-responsive.

02:12:29 18 THE COURT: Sustained. After the word, "yes," the  
02:12:36 19 remainder of that answer is struck.

02:12:37 20 Q. (By Mr. Sacksteder) In the game, not referring to the  
02:12:39 21 claim specifically, this is how somebody selects a card  
02:12:44 22 that they want to receive, right?

02:12:45 23 A. Yes.

02:12:46 24 Q. And in the claim, that person selecting a card that  
02:12:48 25 they want to receive is the second user, correct?

02:12:51 1 A. Yes.

02:12:56 2 Q. And they want to receive it by having it given to them

02:12:59 3 by the first user, correct?

02:13:01 4 A. Yes.

02:13:02 5 MR. SACKSTEDER: Let's go to the next one, DDX-84.

02:13:07 6 Q. (By Mr. Sacksteder) This is the screen that the first

02:13:17 7 user in your view sees, correct?

02:13:22 8 A. Yes.

02:13:22 9 Q. And this is the screen where that user is going to give

02:13:26 10 a card to somebody else, right?

02:13:29 11 A. Yes.

02:13:34 12 Q. And you walked through an example where a card was

02:13:36 13 going to be given to Voxel, correct?

02:13:40 14 A. Yes.

02:13:40 15 Q. And that's the bat card in this case, right?

02:13:43 16 A. Yes.

02:13:46 17 Q. And if the user who's giving the card wants to give a

02:13:53 18 card to Voxel, the only card that that giving user can give

02:14:01 19 is the bat card; the one that has been requested, correct?

02:14:05 20 A. Yes.

02:14:05 21 Q. So that card was selected by the recipient, and then

02:14:10 22 the donor just says, I'll give you the card you want,

02:14:17 23 right?

02:14:17 24 A. I select who to give what card to. So, yes, I select

02:14:31 25 Voxel -- if I select Voxel, I give him that card.

02:14:35 1 Q. The only card you can give to Voxel is the bat card in  
02:14:39 2 this example, right?

02:14:40 3 A. Yes.

02:14:40 4 Q. Don't have any other choice?

02:14:42 5 A. Correct.

02:14:42 6 Q. You can't select another card and say take this one and  
02:14:48 7 send?

02:14:48 8 A. Not to Voxel, that's correct.

02:15:07 9 Q. I believe you testified that if a user donates a card,  
02:15:11 10 gives a card to another user through this process, then the  
02:15:16 11 user that receives it doesn't actually get the card at that  
02:15:20 12 time, correct?

02:15:24 13 A. I don't understand the question.

02:15:25 14 Q. There are some other requirements before you get the  
02:15:28 15 card?

02:15:31 16 A. They get the card that's received. I disagree with  
02:15:35 17 your characterization.

02:15:36 18 Q. They don't get the card unless they pay gold and unless  
02:15:40 19 they are members of the same clan, correct?

02:15:43 20 A. They don't get the benefit. I think you're asking me  
02:15:47 21 two separate things.

02:15:48 22 Q. You're right. I apologize.  
02:15:50 23 The -- the updated card, they don't get that  
02:15:53 24 unless they pay for it, right?

02:15:54 25 A. They don't get the benefit -- they don't upgrade the

02:15:57 1 card, correct. But they've already received the card.

02:15:59 2 Q. Okay. So the benefit is what you're referring to as  
02:16:01 3 the second object?

02:16:05 4 A. We need to go back to the claim language because  
02:16:09 5 there's a second object and there's a benefit. I want to  
02:16:11 6 make sure I'm clear what's what.

02:16:13 7 Q. Okay.

02:16:13 8 MR. SACKSTEDER: Can we pull back up the -- the  
02:16:16 9 slide with the claim language? I think 85, maybe, is the  
02:16:22 10 right one.

02:16:23 11 THE COURT: This is your call, Mr. Sacksteder.  
02:16:26 12 The witness is not going to direct counsel as to what to go  
02:16:29 13 back to. If he want -- if you want to do it, that's fine.

02:16:32 14 MR. SACKSTEDER: Okay.

02:16:33 15 THE COURT: If you want to move on, that's your  
02:16:34 16 call.

02:16:35 17 MR. SACKSTEDER: All right.

02:16:35 18 Q. (By Mr. Sacksteder) There's a claim limitation that  
02:16:43 19 says: Granting by the server, the second object used in  
02:16:46 20 the service to the second user when the transfer  
02:16:48 21 information of the second user satisfies the condition for  
02:16:51 22 granting the second object.

02:16:52 23 Do you see that?

02:16:53 24 A. Yes. Just one second. I'm -- I'm reorienting myself.  
02:17:09 25 Yes, I -- I've read that, okay. Thank you.

02:17:12 1 Q. And the second object in that instance is the ability  
02:17:15 2 to upgrade that card to another level, correct?  
02:17:22 3 A. Yes.  
02:17:28 4 Q. But the recipient, the second user cannot do that  
02:17:32 5 without also paying gold and without also being a member of  
02:17:38 6 the same clan, correct?  
02:17:40 7 A. You have to pay gold, correct.  
02:17:47 8 Q. Gold is not transfer information, as that's used in the  
02:18:00 9 claim, correct?  
02:18:01 10 A. No.  
02:18:03 11 Q. And if the user who received the card doesn't have any  
02:18:07 12 gold, then they can't get the upgrade, right?  
02:18:12 13 A. Correct.  
02:18:16 14 Q. Let's move on to the '594 patent.  
02:18:47 15 MR. SACKSTEDER: Mr. Smith, can you pull up the  
02:18:50 16 background section of the '594 patent, please?  
02:19:00 17 Q. (By Mr. Sacksteder) That background section describes  
02:19:02 18 known city building games at the time the application was  
02:19:05 19 filed, correct?  
02:19:07 20 A. Yes.  
02:19:07 21 Q. It was filed in -- originally in Japan in September of  
02:19:12 22 2013, correct?  
02:19:14 23 A. Yes.  
02:19:15 24 Q. And Clash of Clans, Supercell was already a known city  
02:19:20 25 building game at that time, correct?

02:19:22 1 A. Yes.

02:19:23 2 Q. In fact, it was a very successful game at that time,

02:19:25 3 wasn't it?

02:19:26 4 A. I don't know. I haven't rendered an opinion on that.

02:19:30 5 Q. Do you personally know?

02:19:32 6 A. No.

02:19:32 7 Q. You just weren't aware one way or the other?

02:19:36 8 A. I -- I don't know.

02:19:37 9 Q. I want to make sure we're clear about a couple of

02:19:42 10 things.

02:19:43 11                   Claim 1 of the '594 patent is not alleged to be

02:19:48 12 infringed in this case, right?

02:19:51 13 A. Can you repeat the question, please?

02:20:04 14 Q. Claim 1 -- you don't have any opinion about whether

02:20:07 15 Claim 1 is infringed, right?

02:20:08 16 A. I disagree. It's my opinion --

02:20:14 17 Q. Let me -- let me -- let me rephrase my question.

02:20:18 18                   You don't have any opinion about whether Claim 1

02:20:21 19 by itself is infringed?

02:20:23 20 A. I disagree.

02:20:24 21 Q. GREE is not asserting infringement of Claim 1, correct?

02:20:28 22 A. Yes.

02:20:28 23 Q. And when you discussed Claim 1, you talked about a

02:20:31 24 feature called layout editor, correct?

02:20:36 25 A. Yes.

02:20:36 1 Q. And layout editor allows a user to copy the user's own  
02:20:43 2 layout, correct?  
02:20:45 3 A. Yes.  
02:20:46 4 Q. And the accused feature is copy layout, correct?  
02:20:55 5 A. Yes.  
02:20:56 6 Q. Copy layout requires you to copy somebody else's  
02:21:02 7 layout, right?  
02:21:06 8 A. I'm -- I'm not following.  
02:21:09 9 Q. The copy layout feature requires a user -- or allows a  
02:21:15 10 user to copy the layout of somebody else, rather than that  
02:21:19 11 user's own layout, correct?  
02:21:22 12 A. I'm not sure if you switched from copy layout in the  
02:21:26 13 source code to copy layout in the patent. So I'm -- I'm  
02:21:29 14 having difficulty answering your question.  
02:21:31 15 Q. Do you understand there's a feature called copy layout  
02:21:33 16 in the patent -- or strike that.  
02:21:36 17 Do you understand that there is a feature called  
02:21:39 18 copy layout in Clash of Clans?  
02:21:43 19 A. Yes, in the game there is a feature.  
02:21:45 20 Q. And you showed us a video where you pushed a button in  
02:21:48 21 the corner of the screen, and you went to another player's  
02:21:53 22 layout, correct?  
02:21:53 23 A. Yes.  
02:21:54 24 Q. And that is the copy layout feature, correct?  
02:21:58 25 A. Yes, for Claim 2.

02:22:01 1 Q. And the feature that is accused of infringing Claim 2,  
02:22:05 2 which is the only claim asserted, is the copy layout  
02:22:08 3 feature, right?

02:22:08 4 A. Yes.

02:22:10 5 Q. So you don't have any -- there is no allegation in this  
02:22:14 6 case that just copying your own layout infringes the patent  
02:22:20 7 without copying another user's layout?

02:22:22 8 A. Correct.

02:22:36 9 Q. All right. Let's talk about Claim 2 of the '594  
02:22:38 10 patent.

02:22:40 11 MR. SACKSTEDER: Can you call that up, Mr. Smith,  
02:22:40 12 please?

02:22:46 13 Q. (By Mr. Sacksteder) And this is Claim 2. And it says:  
02:22:49 14 The storage unit further stores a template related to a  
02:22:52 15 different player.

02:22:54 16 Correct?

02:22:55 17 A. Yes.

02:22:56 18 Q. Okay. So the template that is stored has to be related  
02:23:00 19 to a different player, right?

02:23:01 20 A. Yes.

02:23:07 21 Q. So can we look at the -- an example that you provided?

02:23:10 22 MR. SACKSTEDER: Mr. Smith, I think it is PX-167,  
02:23:13 23 and I want to start it about 20 seconds in.

02:23:17 24 Q. (By Mr. Sacksteder) This is a video you created,  
02:23:28 25 correct?

02:23:28 1 A. Yes.

02:23:28 2 Q. And that's actually going to the other player's layout

02:23:31 3 and then hitting copy layout, right?

02:23:34 4 A. Yes.

02:23:34 5 Q. Okay. And then we are in the layout editor screen,

02:23:39 6 correct?

02:23:39 7 A. Yes.

02:23:41 8 Q. All right. And then you need to select a slot where

02:23:45 9 you're going to store the layout that you want to copy,

02:23:48 10 right?

02:23:48 11 A. Yes.

02:23:53 12 MR. SACKSTEDER: Let's go the next four seconds,

02:23:56 13 please.

02:23:56 14 Q. (By Mr. Sacksteder) All right. And a slot has been

02:24:04 15 selected there, correct?

02:24:04 16 A. Yes.

02:24:06 17 Q. And then you've gone into village edit mode, correct?

02:24:11 18 A. Yes.

02:24:11 19 Q. All right. So the other player's layout is behind that

02:24:15 20 dialog box that says village edit mode, correct?

02:24:21 21 A. Yes.

02:24:21 22 Q. And it specifically says, that right now you can't use

02:24:24 23 that layout to have in your village for a battle, correct?

02:24:27 24 A. It says: Buildings not found from copied layout or

02:24:39 25 blocked by obstacles have been moved to your inventory.

02:24:44 1 Q. All right. So there are some things that you have to  
02:24:46 2 do before you can use the layout of the other player to do  
02:24:49 3 anything, right?

02:24:50 4 A. I disagree.

02:24:50 5 Q. You can't play a game -- you can't have a battle in  
02:24:56 6 that layout until you deal with all those items in the  
02:25:00 7 inventory, correct?

02:25:01 8 A. Correct.

02:25:06 9 Q. You can't have a battle in village edit, right?

02:25:12 10 A. Correct.

02:25:12 11 Q. And you can't have a battle in the layout slot of  
02:25:17 12 layout editor, right?

02:25:17 13 A. Correct.

02:25:18 14 Q. All right. So what you have to do is you have to do  
02:25:20 15 something with each of those blue squares at the bottom.  
02:25:24 16 They have buildings that are either in your layout but not  
02:25:28 17 in the other player's layout, and they're in the way, or  
02:25:31 18 they're buildings in the other player's layout that you  
02:25:35 19 just don't have.

02:25:37 20 And until you have placed them, you cannot use  
02:25:39 21 that layout to have a battle, right?

02:25:42 22 A. You need to move them from the bottom line.

02:25:46 23 Q. So you have to get rid of them?

02:25:49 24 A. Yes.

02:25:49 25 Q. All right. And until that point, there is nothing to

02:25:54 1 battle over, right?

02:25:55 2 A. Correct.

02:26:00 3 Q. And the way that you do it typically is either to buy

02:26:02 4 the buildings you don't have or replace the buildings that

02:26:05 5 you do have, correct?

02:26:09 6 A. In -- in that specific example, if the player is more

02:26:13 7 advanced, so that's correct.

02:26:15 8 Q. So this is the only example that you gave, right?

02:26:29 9 A. Yes.

02:26:29 10 Q. You didn't show any example -- any video where you

02:26:33 11 actually got to the point where you had a layout that you

02:26:38 12 could have a battle on, right?

02:26:39 13 A. I disagree.

02:26:41 14 Q. With regard to another player's layout?

02:26:48 15 A. No, you're correct. With regard to your own template,

02:26:51 16 I showed it for Claim 1.

02:26:53 17 Q. Right, exactly. But this is somebody else's, right?

02:26:57 18 A. Yes.

02:26:57 19 Q. And that causes that conflict between what's in your

02:27:01 20 layout already and what's in the other player's layout?

02:27:05 21 A. I disagree with that characterization.

02:27:08 22 Q. Well, there are things in the other player's layout

02:27:11 23 that you don't have, and there are things in your layout

02:27:13 24 that are blocking what's in the other person's layout,

02:27:21 25 right?

02:27:21 1 A. Possibly.

02:27:21 2 Q. So there is -- it says finish later over there, right?

02:27:24 3 A. Yes.

02:27:25 4 Q. So the thing that you have to finish is getting rid of  
02:27:28 5 those buildings somehow before you can actually make this  
02:27:32 6 your active layout, correct?

02:27:34 7 A. Yes.

02:27:34 8 Q. And by setting it as your active layout, you've made it  
02:27:39 9 a layout that you can actually use for a battle, correct?

02:27:41 10 A. Yes.

02:27:41 11 Q. And you testified in your deposition that if you have  
02:27:50 12 to move buildings in the layout in village edit mode when  
02:27:55 13 you have imported it from somebody else, then that is not a  
02:27:59 14 template related to another player, correct?

02:28:01 15 A. I don't recall.

02:28:19 16 Q. We can move on to --

02:28:27 17 MR. SACKSTEDER: Your Honor, this would be a good  
02:28:28 18 stopping place.

02:28:28 19 THE COURT: Tell me what you have left as far as  
02:28:30 20 anticipated cross-examination, counsel.

02:28:33 21 MR. SACKSTEDER: I have one more set of patents,  
02:28:35 22 but they're pretty involved, and that --

02:28:38 23 THE COURT: What's your best time estimate?

02:28:40 24 MR. SACKSTEDER: 20 to 30 minutes.

02:28:42 25 THE COURT: All right. Well, I think, then, in

02:28:48 1 light of that, we'll use this opportunity to take a short  
02:28:50 2 recess, ladies and gentlemen.

02:28:51 3 Members of the jury, if you'll simply close your  
02:28:54 4 notebooks and leave them in your chairs. Don't discuss the  
02:28:57 5 case among yourselves, and we'll be back in a few minutes  
02:29:00 6 to continue with the Defendant's cross-examination of this  
02:29:02 7 witness.

02:29:02 8 The jury is excused for recess.

02:29:04 9 COURT SECURITY OFFICER: All rise.

02:29:05 10 (Jury out.)

02:29:06 11 THE COURT: All right. The Court stands in  
02:29:34 12 recess. I'd like to see counsel in chambers.

02:29:37 13 (Recess.)

02:53:00 14 (Jury out.)

02:53:00 15 COURT SECURITY OFFICER: All rise.

02:53:01 16 THE COURT: Be seated, please.

02:53:02 17 Mr. Sacksteder, are you prepared to continue with  
02:53:13 18 your cross-examination?

02:53:16 19 MR. SACKSTEDER: Yes, Your Honor.

02:53:18 20 THE COURT: All right. Let's bring the jury back  
02:53:22 21 in, please.

02:53:22 22 COURT SECURITY OFFICER: All rise.

02:53:25 23 (Jury in.)

02:53:26 24 THE COURT: Welcome back, members of the jury.  
02:53:51 25 Please be seated.

02:53:51 1 We'll continue with the Defendant's  
02:53:56 2 cross-examination of Dr. Akl.  
02:53:58 3 Mr. Sacksteder, you may proceed.  
02:54:00 4 MR. SACKSTEDER: Thank you, Your Honor.  
02:54:01 5 Q. (By Mr. Sacksteder) Dr. Akl, you offered an opinion  
02:54:05 6 about the dependent claims from Claim 1 of the '481 patent,  
02:54:12 7 correct?  
02:54:12 8 A. Yes.  
02:54:12 9 Q. All right.  
02:54:13 10 MR. SACKSTEDER: Could we put that up for a  
02:54:18 11 moment, Mr. Smith?  
02:54:19 12 Q. (By Mr. Sacksteder) Claim 1 covers a terminal device,  
02:54:25 13 correct?  
02:54:25 14 A. Yes.  
02:54:25 15 Q. And you testified earlier that that is a phone, right?  
02:54:29 16 A. Yes.  
02:54:31 17 Q. And the terminal device has a storage unit, correct?  
02:54:37 18 A. Yes.  
02:54:37 19 Q. And that storage unit is a little chip that is the  
02:54:42 20 memory for the phone, correct?  
02:54:44 21 A. Yes.  
02:54:45 22 Q. And you testified also about -- it's actually a little  
02:54:51 23 bit below that -- the input receiving unit, correct?  
02:55:00 24 A. Yes.  
02:55:01 25 Q. And the input receiving unit is -- at least includes

02:55:07 1 the touchscreen of the phone, correct?

02:55:09 2 A. Yes.

02:55:09 3 Q. And you testified that Supercell directly infringes

02:55:13 4 this claim, correct?

02:55:14 5 A. Yes.

02:55:14 6 Q. Supercell does not make cell phones, correct?

02:55:21 7 A. Correct.

02:55:22 8 Q. Supercell does not sell cell phones, correct?

02:55:25 9 A. That's my understanding.

02:55:29 10 MR. SACKSTEDER: Can we bring up Claim 1 of the

02:55:32 11 '137, please, Mr. Smith? And we'll go to Lines 45 to 54.

02:55:45 12 Q. (By Mr. Sacksteder) Do you see that, Dr. Akl?

02:55:47 13 A. Yes.

02:55:47 14 Q. The first highlighted claim element requires the --

02:55:50 15 that the controller permit the player to select the game

02:55:55 16 contents, correct?

02:55:55 17 A. Yes.

02:55:55 18 Q. And I'll call that selection. Will you understand

02:55:59 19 that?

02:55:59 20 A. Yes.

02:56:01 21 Q. And then the second highlighted claim element requires

02:56:08 22 that the controller subtract the point amount -- strike

02:56:16 23 that.

02:56:16 24 The second highlighted limitation requires that

02:56:19 25 the controller subtract the point of the selected game

02:56:23 1 contents, correct?

02:56:23 2 A. Yes.

02:56:23 3 Q. And can we call that subtraction?

02:56:28 4 A. Okay.

02:56:29 5 Q. And the third highlighted element requires that the

02:56:33 6 controller add a predetermined amount to the upper limit of

02:56:37 7 the point, correct?

02:56:38 8 A. Yes.

02:56:38 9 Q. And can we call that addition?

02:56:41 10 A. Yes.

02:56:42 11 Q. All right. And we'll all understand each other,

02:56:45 12 correct?

02:56:45 13 A. Yes.

02:56:47 14 Q. All right. You agree, do you not, that in order to

02:56:51 15 practice these limitations, the selection, subtraction, and

02:56:57 16 addition steps must be performed in a specific order,

02:57:03 17 correct?

02:57:03 18 A. Yes.

02:57:05 19 Q. In particular, selection must be before subtraction,

02:57:14 20 and subtraction must be before addition, correct?

02:57:19 21 A. Yes.

02:57:19 22 Q. So you have selection, subtraction, addition, right?

02:57:24 23 A. Yes.

02:57:25 24 Q. All right. And this specific order is required for all

02:57:33 25 claims of the '137 patent, correct?

02:57:41 1 A. Where is this out of right now, please?

02:57:44 2 Q. This is the '137 patent.

02:57:47 3 A. No, no, which claims, sorry?

02:57:49 4 Q. Oh, I was just -- I was referring to all of them. That

02:57:54 5 order appears in all the claims of the '137, correct?

02:57:56 6 A. Yes.

02:57:56 7 Q. And that order appears in all -- is required for all

02:58:00 8 the asserted claims that you have offered an opinion on

02:58:03 9 today of the '1 -- of the '481 patent, correct?

02:58:08 10 A. Yes.

02:58:08 11 Q. So if a player's selection of the game contents does

02:58:11 12 not happen before subtraction of the point, there is no

02:58:17 13 infringement of either patent, correct?

02:58:21 14 A. Yes.

02:58:23 15 Q. And, likewise, if there is addition of a predetermined

02:58:31 16 amount to the upper limit before subtraction of the point,

02:58:34 17 there is no infringement of either patent, correct?

02:58:37 18 A. Yes.

02:58:39 19 Q. GREE accuses Clash Royale of infringing these two

02:58:45 20 patents, correct?

02:58:46 21 A. Yes.

02:58:49 22 Q. And you made a number of videos of Clash Royale,

02:58:52 23 correct?

02:58:52 24 A. Yes.

02:58:52 25 Q. And you relied on those videos in forming your opinions

02:58:55 1 in this case, right?

02:58:56 2 A. Yes.

02:58:57 3 Q. And you tried to make them accurately show how Clash  
02:59:02 4 Royale works, correct?

02:59:03 5 A. Yes.

02:59:06 6 MR. SACKSTEDER: Can we pull up PTX-150, please?

02:59:10 7 Q. (By Mr. Sacksteder) PTX-150 is a video that you  
02:59:13 8 recorded, correct?

02:59:15 9 A. Yes.

02:59:17 10 Q. And the reason you made this video was to explicitly  
02:59:20 11 show the sequence of how things happened in the game,  
02:59:27 12 correct?

02:59:27 13 A. Yes.

02:59:29 14 Q. And that's your hand that we're looking at on the  
02:59:32 15 screen, correct?

02:59:33 16 A. Yes.

02:59:34 17 Q. And it's a video of you playing Clash Royale, correct?

02:59:38 18 A. Yes.

02:59:39 19 Q. The left portion of the screen shows your hand playing  
02:59:43 20 the game, right?

02:59:45 21 A. Yes.

02:59:45 22 Q. And the right portion is a screen recording that shows  
02:59:51 23 what's occurring while you play the game without your hand  
02:59:54 24 obstructing the view, correct?

02:59:56 25 A. Yes.

02:59:59 1 Q. So we have added a reference window to the video to  
03:00:04 2 show the video time. Do you see that in the upper  
03:00:09 3 left-hand corner?  
03:00:10 4 A. Okay. Yes.  
03:00:12 5 Q. And we have skipped to the 30-second mark of the video.  
03:00:20 6 MR. SACKSTEDER: Can you play the first four  
03:00:22 7 seconds, Mr. Smith?  
03:00:27 8 (Videoclip played.)  
03:00:30 9 QUESTION: That portion of the video showed you  
03:00:32 10 selecting and deploying a card, correct?  
03:00:32 11 ANSWER: Yes.  
03:00:39 12 (Videoclip ends.)  
03:00:39 13 MR. SACKSTEDER: Can we overlay the zoomed-in  
03:00:42 14 version of the Elixir bar?  
03:00:44 15 Q. (By Mr. Sacksteder) So do you see that the tray with  
03:00:48 16 the cards at the bottom and the Elixir bar are now shown  
03:00:51 17 over the top? That bar shows how much Elixir a player  
03:00:59 18 currently has, correct?  
03:01:04 19 A. Yes.  
03:01:06 20 MR. SACKSTEDER: Mr. Smith, can you play another  
03:01:08 21 two seconds of the video at half speed?  
03:01:11 22 Q. (By Mr. Sacksteder) Dr. Akl, there is -- the Elixir  
03:01:18 23 bar has a couple of pink segments, and then there was a  
03:01:22 24 gray segment that moved over to the right constantly as the  
03:01:28 25 video played, correct?

03:01:30 1 A. Yes.

03:01:30 2 Q. And that shows fractional amounts of Elixir being added

03:01:35 3 to the Elixir bar, correct?

03:01:36 4 A. Yes.

03:01:37 5 Q. Okay. Because you testified earlier that Elixir is

03:01:42 6 added every 2.8 seconds, right?

03:01:45 7 A. A point of Elixir is added every 2.8 seconds.

03:01:50 8 Q. But it's added constantly and you just get to the next

03:01:55 9 point after 2.8 seconds, correct?

03:01:55 10 A. I'm sorry, what is "it" in your question?

03:01:58 11 Q. The Elixir is added continuously, and it takes

03:02:05 12 2.8 seconds to reach the next whole number, correct?

03:02:09 13 A. Yes.

03:02:14 14 Q. So the screenshot shows that the Elixir was added in

03:02:20 15 fractional amounts between about 34 seconds and 36 seconds

03:02:26 16 and 3/100ths on the screen, correct?

03:02:29 17 A. There is a visualization of the gray part on the

03:02:37 18 screen, if that's what you're asking me.

03:02:39 19 Q. And that is Elixir being added, correct?

03:02:42 20 A. Yes.

03:02:42 21 Q. And it's being added in small fractions in accordance

03:02:45 22 with an internal timer that Clash Royale is running,

03:02:51 23 correct?

03:02:51 24 A. Yes.

03:02:52 25 Q. And you agree that each of those fractional amounts of

03:02:56 1 Elixir -- Elixir that are added to a player's Elixir is a  
03:03:01 2 predetermined amount as that is used in the patent claims,  
03:03:09 3 correct?

03:03:09 4 A. I disagree.

03:03:22 5 MR. SACKSTEDER: Can we play Dr. Akl's deposition  
03:03:25 6 transcript, Volume 1, Page 248, Line 23 through 249, Line  
03:03:32 7 12?

03:03:32 8 (Videoclip played.)

03:03:50 9 QUESTION: So you select and then you subtract and  
03:03:53 10 then you either add a predetermined amount to the upper  
03:03:55 11 limit of the point or you restore the upper limit of the  
03:03:58 12 point, correct? That's -- that's the order that these  
03:04:02 13 things happen?

03:04:09 14 ANSWER: I think that's the last limitation. Once  
03:04:11 15 you -- once you've -- once the controller permitted you to  
03:04:15 16 select a card, which is the previous limitation, and it is  
03:04:19 17 selected by the player, then the controller first subtracts  
03:04:23 18 those points. You lose part of your Elixir bar, and then  
03:04:28 19 it starts growing again.

03:04:29 20 So it -- it's -- it -- the game will add Elixir --  
03:04:40 21 the game -- the game will add Elixir to your Elixir bar at  
03:04:45 22 the predetermined amount. So that would meet that claim  
03:04:48 23 language.

03:04:51 24 (Videoclip ends.)

03:04:51 25 Q. (By Mr. Sacksteder) There is no requirement that the

03:04:54 1 predetermined amount be a whole number on the Elixir bar,  
03:05:01 2 right?

03:05:01 3 A. Correct.

03:05:01 4 Q. A user tapping a card is an example of selecting that  
03:05:05 5 would meet the claim language for selection, correct?

03:05:15 6 A. I disagree.

03:05:21 7 MR. SACKSTEDER: Can we play Dr. Akl's deposition  
03:05:24 8 transcript, Volume 1, 237, Lines 8 through 20?

03:05:37 9 (Videoclip played.)

03:05:38 10 ANSWER: So the user's tapping I think would be an  
03:05:45 11 example of selecting as it meets the claim language.

03:05:48 12 QUESTION: So there's no requirement to select it  
03:05:50 13 and then play it into the field of the -- of the game in  
03:05:55 14 order for the game content to be selected, correct?

03:06:00 15 ANSWER: I think at least how this limitation here  
03:06:05 16 reads, or Limitation 1h is when a user taps that card, and  
03:06:16 17 I show a couple of examples of what happens next for the  
03:06:22 18 next limitation. Because there is a mathematical operation  
03:06:26 19 that happens, you -- you've met the language in the claim  
03:06:35 20 for selecting game content for this limitation.

03:06:43 21 (Videoclip ends.)

03:06:43 22 Q. (By Mr. Sacksteder) That was your testimony in your  
03:06:44 23 deposition, sir, correct?

03:06:51 24 A. Yes.

03:06:51 25 MR. SACKSTEDER: All right. Can we move

03:06:53 1 forward -- I think it's to about 2 minutes and 18 seconds  
03:06:56 2 in the video that Dr. Akl made?

03:07:02 3 Can you run the video forward at half speed,  
03:07:06 4 Mr. Smith?

03:07:14 5 Q. (By Mr. Sacksteder) So when you tapped the card in  
03:07:15 6 your video, the Elixir was over 8 on the Elixir bar,  
03:07:15 7 correct?

03:07:26 8 A. Yes.

03:07:26 9 MR. SACKSTEDER: Let's run it forward a little bit  
03:07:28 10 more.

03:07:36 11 Q. (By Mr. Sacksteder) All right. You have now at this  
03:07:37 12 point pulled your finger away from the screen of the phone,  
03:07:44 13 and the Elixir has increased, but it is still under 9,  
03:07:51 14 correct?

03:07:51 15 A. I'm sorry, what is the question?

03:07:54 16 Q. If you see on the left screen, it shows your finger  
03:07:58 17 using the phone to play the game. Your finger is now no  
03:08:02 18 longer touching the screen. You've removed your finger --  
03:08:05 19 you played the card, and you've removed your finger,  
03:08:08 20 correct?

03:08:08 21 A. Yes.

03:08:08 22 Q. And the Elixir has increased, but it's still under 9,  
03:08:12 23 correct?

03:08:12 24 A. Yes.

03:08:20 25 MR. SACKSTEDER: Let's move it forward a little

03:08:22 1 bit more, Mr. Smith.

03:08:29 2 Q. (By Mr. Sacksteder) And now the Elixir has gone over 9  
03:08:33 3 in the Elixir bar, correct?

03:08:35 4 A. Yes.

03:08:41 5 MR. SACKSTEDER: All right. Let's move the video  
03:08:45 6 forward a little bit further.

03:08:49 7 Q. (By Mr. Sacksteder) And there the amount has  
03:08:52 8 subtracted, correct -- has been subtracted, correct?

03:08:55 9 A. Yes.

03:08:56 10 Q. So you tapped the card, played it in the field, removed  
03:09:01 11 your finger, the Elixir was still going up and didn't go  
03:09:05 12 down until after all that happened, correct?

03:09:06 13 A. Yes, for the arrow card.

03:09:12 14 Q. So in this screen, the Elixir shows about 6, it looks  
03:09:24 15 like, after the subtraction of the points for that card?

03:09:27 16 A. Yes.

03:09:32 17 Q. And that's a video that you provided with your expert  
03:09:36 18 report to explain your opinions in this case, correct?

03:09:43 19 A. Yes, but I did not rely on the arrows.

03:09:51 20 MR. SACKSTEDER: Move to strike everything after  
03:09:55 21 "yes" as non-responsive.

03:10:04 22 THE COURT: Sustained.

03:10:05 23 Q. (By Mr. Sacksteder) Dr. Akl, can you look at Claim 2  
03:10:07 24 of the '137 patent, when it shows up on the screen?

03:10:19 25 The first part of Claim 2 that is highlighted

03:10:23 1 refers back to the selection step from Claim 1, correct?

03:10:27 2 A. Yes.

03:10:29 3 Q. And the second highlighted part requires that the

03:10:34 4 control unit remove the game content selected by the player

03:10:37 5 from the first field, correct?

03:10:40 6 A. Yes.

03:10:40 7 Q. And the first field is the tray where the cards are

03:10:43 8 down at the bottom, correct?

03:10:44 9 A. Yes.

03:10:45 10 Q. Okay. Can we refer to that as game content removal?

03:10:49 11 A. Okay. Yes.

03:10:49 12 Q. The third portion of Claim 2 that is highlighted

03:10:56 13 requires that the control unit update the first field with

03:10:58 14 a new game content alternative to the removed game content,

03:11:04 15 correct?

03:11:04 16 A. Yes.

03:11:05 17 Q. And can we call that game content update?

03:11:09 18 A. Yes.

03:11:13 19 Q. You agree that in order to practice Claim 2, the

03:11:18 20 selection, game content removal, and game content update

03:11:23 21 steps must be performed in a specific order, correct?

03:11:26 22 A. Yes.

03:11:26 23 Q. And, in particular, selection must come before game

03:11:33 24 content removal, and game content removal must come before

03:11:39 25 game content update, correct?

03:11:40 1 A. Yes.

03:11:40 2 Q. So it's selection, removal, update, right?

03:11:45 3 A. Yes.

03:11:46 4 Q. And this specific order is required for Claims 2 and 15

03:11:51 5 of the '137 patent, correct?

03:11:53 6 A. Yes.

03:11:54 7 Q. And it is required for all asserted claims of the '481

03:11:59 8 patent, correct?

03:12:02 9 A. Yes.

03:12:03 10 Q. And so if a player's selection of the game contents

03:12:08 11 does not occur before game content removal, there is no

03:12:11 12 infringement of Claims 2 and 15 of the '137 patent or all

03:12:17 13 claims of the '481 patent, correct?

03:12:20 14 A. Yes.

03:12:25 15 MR. SACKSTEDER: Can we resume our video from

03:12:33 16 Dr. Akl?

03:12:36 17 Q. (By Mr. Sacksteder) As you drag the card into the

03:12:40 18 battlefield --

03:12:41 19 MR. SACKSTEDER: If we can run the video. There

03:12:50 20 you go. So you can stop it there.

03:12:52 21 Q. (By Mr. Sacksteder) And you can see that it has been

03:12:53 22 removed from its location at the bottom of the screen,

03:12:58 23 correct?

03:12:58 24 A. Yes.

03:12:59 25 Q. And at the point the video stops, your finger is

03:13:03 1 entirely away from the phone, correct?

03:13:05 2 A. Yes.

03:13:06 3 Q. And no Elixir has been subtracted yet, correct?

03:13:10 4 A. Yes.

03:13:17 5 Q. Is it your testimony that selection has not been

03:13:19 6 completed at this point?

03:13:20 7 A. Correct.

03:13:21 8 Q. The card is removed from the hand of cards at this

03:13:26 9 point, correct?

03:13:27 10 A. Yes.

03:13:27 11 Q. The claim language says that the control unit removes

03:13:37 12 game contents from the first field, correct?

03:13:40 13 A. Yes.

03:13:40 14 Q. And the first field is the row of cards in -- at the

03:13:44 15 bottom of the screen, right?

03:13:45 16 A. Yes.

03:13:45 17 Q. Thank you, Dr. Akl.

03:13:50 18 MR. SACKSTEDER: I have no more questions.

03:13:52 19 THE COURT: You pass the witness?

03:13:54 20 MR. SACKSTEDER: I do. Thank you, Your Honor.

03:13:56 21 THE COURT: Is there redirect, Mr. Moore?

03:13:58 22 MR. MOORE: Yes, Your Honor, very briefly.

03:14:00 23 THE COURT: Please proceed.

03:14:01 24 MR. MOORE: Thank you, Your Honor.

03:14:18 25 May I proceed, Your Honor?

03:14:20 1 THE COURT: Yes.

03:14:20 2 MR. MOORE: Thank you.

03:14:20 3 REDIRECT EXAMINATION

03:14:21 4 BY MR. MOORE:

03:14:21 5 Q. Dr. Akl, do you recall viewing just a few minutes ago  
03:14:33 6 the slowed-down video that counsel for Supercell showed you  
03:14:38 7 about the selection and subtraction and addition sequence?

03:14:43 8 A. Yes.

03:14:45 9 Q. Now, what is the evidence that you rely on to  
03:14:52 10 definitively establish how that sequence occurs in Clash  
03:14:55 11 Royale?

03:14:55 12 A. I rely on the source code, which tells me exactly what  
03:14:59 13 is going on in the game.

03:15:01 14 Q. Do the videos -- well, strike that.

03:15:04 15 How would you characterize the ability of the  
03:15:08 16 videos to -- to demonstrate precise operation of select,  
03:15:15 17 subtract, and add?

03:15:17 18 A. So the -- the videos are graphical representations of  
03:15:22 19 the game running. And there is a lot of code that makes  
03:15:27 20 the objects in the game appear on the screen and to get the  
03:15:32 21 animations work and you're connected to the Internet and  
03:15:35 22 you're communicating with the server.

03:15:39 23 So it is not uncommon for some small instances of  
03:15:44 24 some minor examples to look like -- like something may be  
03:15:48 25 happening out of order because you are playing a video in

03:15:51 1 real-time, and you're calling other functions that are  
03:15:54 2 displaying an animation, making an animation. So those --  
03:16:04 3 if -- if that happened consistently every time, you would  
03:16:06 4 say, okay, this is how things work.

03:16:08 5 But what you do is you go to the source code  
03:16:10 6 because the source code running is what happens every time.  
03:16:14 7 So the source code shows in the correct sequence. And  
03:16:17 8 there are many examples of infringement, but there may be  
03:16:21 9 one or two where the -- when I'm playing, there is a little  
03:16:26 10 lag in the movement on the device running which may show  
03:16:29 11 something happening out of sequence when you zoom in and  
03:16:35 12 slow it down to such an effect. But that doesn't change my  
03:16:38 13 opinion of how the source code works, because that's always  
03:16:41 14 working the same way.

03:16:42 15 Q. Did -- excuse me, did Supercell's counsel show any  
03:16:47 16 source code on your cross-examination?

03:16:48 17 A. No.

03:16:48 18 Q. And did I show you the source code on your direct  
03:16:53 19 examination that demonstrates the sequence in which Clash  
03:16:58 20 Royale operates?

03:16:58 21 A. Yes, you did.

03:17:02 22 MR. MOORE: Could we see Slide No. 94, please,  
03:17:04 23 from our presentation, Mr. Groat? Thank you.

03:17:09 24 Q. (By Mr. Moore) Do you recall being asked about '481  
03:17:14 25 patent, Claim 1, regarding the terminal device?

03:17:16 1 A. Yes.

03:17:16 2 Q. And do you recall being asked if Supercell makes or

03:17:21 3 sells phones?

03:17:22 4 A. Yes.

03:17:22 5 Q. Does Supercell use the user's phones?

03:17:25 6 A. Yes.

03:17:28 7 Q. And how so?

03:17:29 8 A. The -- the Supercell servers communicate with the

03:17:36 9 user's phone. And Supercell's software is running on the

03:17:39 10 user's phone because you have the game running on the

03:17:41 11 phone. And the game is connected on the phone over an

03:17:45 12 Internet connection to the server that's also running

03:17:48 13 Supercell's software.

03:17:50 14 Q. All right. Do you recall being asked about a server

03:17:53 15 code?

03:17:53 16 A. Yes.

03:17:54 17 Q. And could you please explain to the jury about --

03:17:58 18 strike that.

03:17:59 19 Could you explain to the jury why you relied on

03:18:04 20 the code that you showed them in your direct examination to

03:18:08 21 show infringement?

03:18:09 22 A. Yes. I looked at the code running on the phone

03:18:15 23 because -- and I looked at the communication between the

03:18:19 24 source code in the phone and the server. That tells me

03:18:23 25 what's happening on the phone, and that shows me the

03:18:26 1 messages that go from the phone to the server. So I know  
03:18:29 2 what the server is doing, and I don't need to look at code  
03:18:34 3 executing on the server. The code in human form is similar  
03:18:40 4 on the phone and on the server.

03:18:43 5 When you execute it on the phone, it's running in  
03:18:47 6 C++; and on the server, it's running in Java. But the  
03:18:52 7 human version of the code is the same.

03:18:55 8 Q. Thank you.

03:18:58 9 MR. MOORE: Let me go to our Slide 15, please,  
03:19:01 10 Mr. Groat.

03:19:02 11 Q. (By Mr. Moore) Do you recall being shown the  
03:19:04 12 background of the '594 patent, including the reference to  
03:19:06 13 Clash of Clans from 2013?

03:19:08 14 A. Yes.

03:19:10 15 Q. Did that version of Clash of Clans have the copy layout  
03:19:13 16 feature that you analyzed for Claim 2?

03:19:15 17 A. No.

03:19:18 18 Q. And do you recall some testimony about needing to deal  
03:19:21 19 with other buildings that your clan mate may have in their  
03:19:26 20 layout that you may not?

03:19:27 21 A. Yes.

03:19:27 22 Q. Does the fact you have to maybe to deal with those  
03:19:30 23 buildings have any impact on whether Supercell infringes?

03:19:33 24 A. No.

03:19:33 25 Q. And do any of the questions that you were asked on

03:19:36 1 cross-examination change any of your opinions of direct  
03:19:41 2 infringement that you offered on your direct examination?

03:19:44 3 A. No, they do not.

03:19:45 4 Q. Thank you.

03:19:45 5 MR. MOORE: Pass the witness, Your Honor.

03:19:46 6 THE COURT: Is there additional cross-examination?

03:19:48 7 MR. SACKSTEDER: No, Your Honor. Thank you.

03:19:49 8 THE COURT: Dr. Akl, you may step down.

03:19:52 9 THE WITNESS: Thank you, Your Honor.

03:19:53 10 THE COURT: Plaintiff, call your next witness.

03:20:10 11 MR. MOORE: Thank you, Your Honor.

03:20:11 12 As its next witness, GREE calls its corporate  
03:20:15 13 representative, Mr. Eiji Araki.

03:20:16 14 THE COURT: All right. Mr. Araki, if you'll come  
03:20:18 15 forward and be sworn, please.

03:20:21 16 (Witness sworn.)

03:20:21 17 THE COURT: Please come around, sir, have a seat  
03:20:29 18 on the witness stand.

03:20:49 19 MR. MOORE: Your Honor, may my partner,  
03:20:52 20 Ms. Ludlam, approach the witness with the binder?

03:20:55 21 THE COURT: She may pass out the binders.

03:20:58 22 MR. MOORE: Thank you.

03:21:15 23 THE COURT: You may proceed.

03:21:16 24 MR. MOORE: Thank you, Your Honor.

03:21:16 25 EIJI ARAKI, PLAINTIFF'S WITNESS, SWORN

03:21:16 1 DIRECT EXAMINATION

03:21:16 2 BY MR. MOORE:

03:21:16 3 Q. Good afternoon, Mr. Araki.

03:21:18 4 A. Good afternoon.

03:21:19 5 Q. Would you please introduce yourself to the jury?

03:21:21 6 A. Good afternoon. I'm Eiji Araki. I'm from GREE. I  
03:21:28 7 work at the company as senior vice president and also a  
03:21:33 8 board -- a member of board of directors.

03:21:36 9 Q. And, Mr. Araki, are you going to be speaking -- or  
03:21:38 10 testifying in English today?

03:21:40 11 A. Yes.

03:21:40 12 Q. Is English your first language?

03:21:42 13 A. No.

03:21:42 14 Q. What is your first language?

03:21:44 15 A. My first language is Japanese.

03:21:45 16 Q. And how long have you known English?

03:21:48 17 A. About eight years.

03:21:50 18 Q. How did you learn English?

03:21:52 19 A. I learn English in school.

03:21:55 20 Q. Okay. And if you need me to repeat a question or  
03:22:01 21 opposing counsel to repeat a question because you don't  
03:22:03 22 understand it, would you please ask us to do that?

03:22:05 23 A. Okay. Thank you.

03:22:06 24 Q. Thank you.

03:22:07 25 Mr. Araki, where are you from?

03:22:08 1 A. I'm from Japan. It's called Kanagawa Prefecture, which

03:22:14 2 is next to Tokyo.

03:22:14 3 Q. And what is a prefecture in Japan?

03:22:17 4 A. It's kind of a state in U.S.

03:22:20 5 Q. Okay. And what type of geography is there -- the

03:22:24 6 prefecture where you grew up?

03:22:26 7 A. It's -- it's near the ocean, and there are -- there are

03:22:30 8 lots of mountains and natures.

03:22:32 9 Q. Have you lived in Japan for your whole life?

03:22:34 10 A. Yes, except three years living in U.S.

03:22:37 11 Q. Where did you live when you were in the U.S.?

03:22:40 12 A. I lived in California, San Francisco.

03:22:43 13 Q. Are -- do you have a family, Mr. Araki?

03:22:45 14 A. Yes.

03:22:46 15 Q. Please tell us a little bit about your family.

03:22:49 16 A. I have a wife and also three kids, and one of them was

03:22:53 17 born in U.S., whereas when I was -- when I lived in U.S.

03:22:57 18 Q. And how old are your children?

03:22:59 19 A. 11, 7, 4.

03:23:03 20 Q. Boys and girls?

03:23:04 21 A. Boys and girls.

03:23:06 22 Q. Which are which?

03:23:07 23 A. The two boys and one girl.

03:23:09 24 Q. All right. And when you're not working for GREE, what

03:23:11 25 do you like to do for fun?

03:23:13 1 A. I like outdoor, so camping and fishing, hiking, and  
03:23:18 2 boat stuff.

03:23:19 3 Q. Okay. Now, do you have any experience in designing  
03:23:22 4 games -- video games?

03:23:23 5 A. Yes.

03:23:23 6 Q. And do you have any experience in coding or  
03:23:27 7 programming, writing source code for computers?

03:23:28 8 A. Yes.

03:23:29 9 Q. When did you start programming computers?

03:23:31 10 A. I started to program when I was at 8 years old.

03:23:37 11 Q. 8 years old?

03:23:39 12 A. Yeah.

03:23:39 13 Q. All right. And when did you start programming for  
03:23:41 14 video games?

03:23:42 15 A. At the same time, around 8 years old.

03:23:44 16 Q. What was the first game that you worked on?

03:23:47 17 A. I programmed my first game when I was 8. It was kind  
03:23:53 18 of very simple version of a space invader.

03:23:59 19 Q. How long in your life have you been working on  
03:24:03 20 programming video games?

03:24:03 21 A. Almost 30 years.

03:24:04 22 Q. You also play video games?

03:24:05 23 A. Yes, I love video games.

03:24:06 24 Q. And how long have you been playing video games?

03:24:08 25 A. Same, almost 30 years.

03:24:10 1 Q. Did you attend college or university?

03:24:12 2 A. Yes, I attended Keio University, which is Japanese

03:24:17 3 university.

03:24:18 4 Q. And where is that university located?

03:24:21 5 A. It is located in the town of Kanagawa Prefecture, which

03:24:28 6 is same as I was born.

03:24:28 7 Q. And what did you study there?

03:24:30 8 A. I studied computer science and the design at the

03:24:33 9 university.

03:24:33 10 Q. When did you join GREE?

03:24:35 11 A. I joined GREE in 2005.

03:24:42 12 MR. MOORE: And could we show -- we have a few

03:24:45 13 slides of Mr. Araki's testimony. Would you please show

03:24:48 14 Slide 2?

03:24:48 15 Q. (By Mr. Moore) And when was GREE founded?

03:24:51 16 A. GREE was founded in 2004.

03:24:54 17 Q. And who founded GREE?

03:24:55 18 A. Yoshikazu Tanaka. Mr. Tanaka is the founder of GREE.

03:25:00 19 Q. So how old was GREE when you joined it?

03:25:03 20 A. I joined GREE after six, seven month after it was

03:25:09 21 founded.

03:25:09 22 Q. And how did you come to work for GREE? How did that

03:25:13 23 happen that you joined the company?

03:25:14 24 A. GREE is the name of the company, but at the same time,

03:25:17 25 GREE is a social network. So I was attending the social --

03:25:23 1 the user's gathering meeting of the GREE, and then at that  
03:25:26 2 time, I -- I -- I met the founder, Mr. Tanaka.

03:25:32 3 Q. Did you know him before you attended that gathering?

03:25:35 4 A. No, I didn't know him.

03:25:36 5 Q. Were you a user of the GREE platform?

03:25:38 6 A. Yeah, I was one of the users.

03:25:40 7 Q. Now, how big was GREE when you joined it?

03:25:43 8 A. When I joined GREE, it was just four people, five  
03:25:48 9 people; very tiny setup.

03:25:50 10 Q. And how many employees does it have now?

03:25:51 11 A. Now we have around 1,700 employees.

03:25:56 12 Q. And what -- what is your understanding of why  
03:26:02 13 Mr. Tanaka decided to found GREE as a company?

03:26:05 14 A. Yeah. Mr. Tanaka is a very early believer in the  
03:26:11 15 Internet industry. So when he was young, I think he was --  
03:26:15 16 he was college student, he was -- he traveled the U.S., and  
03:26:18 17 he was inspired by our U.S. tech companies like Yahoo or  
03:26:26 18 Amazon. So he was inspired heavy on that, and then he  
03:26:30 19 founded his own tech company in Japan.

03:26:32 20 Q. What did you do when you first started working for  
03:26:34 21 GREE?

03:26:35 22 A. I worked as product manager at GREE.

03:26:39 23 Q. And what other jobs have you had at GREE?

03:26:42 24 A. After one or two years, I was promoted to the manager  
03:26:47 25 of the team over the product management. And also after

03:26:51 1 that, I was promoted to director, director of the product  
03:26:57 2 management. And after that, I promoted to the senior vice  
03:27:00 3 president.

03:27:00 4 Q. How long you have been on GREE's board of directors?

03:27:04 5 A. I have been in this position for almost seven years.

03:27:10 6 Q. Have you developed any games for GREE?

03:27:12 7 A. Yes. I developed a lot of games at GREE.

03:27:15 8 Q. Okay. What is GREE's business overall?

03:27:19 9 A. So GREE has three major business area. The one biggest  
03:27:27 10 one is the games. And the second one is -- we have media  
03:27:32 11 and advertisement. And the third one is live  
03:27:36 12 entertainment.

03:27:36 13 Q. Where is GREE located?

03:27:37 14 A. GREE is -- GREE's headquarter is located in Tokyo, and  
03:27:42 15 we have some other offices around Japan.

03:27:45 16 Q. How many engineers work at GREE?

03:27:48 17 A. I think there are over -- more than 400 engineers at  
03:27:52 18 GREE.

03:27:53 19 Q. Are there -- how many other employees are there that  
03:27:55 20 work on the development of games?

03:27:56 21 A. There are more game designers and artists. So in  
03:28:02 22 total, I would say more than 800 people working in the  
03:28:06 23 gaming division.

03:28:06 24 Q. Who owns GREE?

03:28:08 25 A. GREE is public-traded company.

03:28:11 1 Q. And where is it traded?

03:28:13 2 A. It's listed on the Tokyo exchange -- Tokyo stock  
03:28:21 3 exchange market.

03:28:22 4 Q. What's the background of the name GREE?

03:28:24 5 A. GREE is named after the theory called six degrees of  
03:28:28 6 separation where you can reach any people in the -- around  
03:28:34 7 the world. If you follow the relation to your friends or  
03:28:39 8 friends' friends or friends' friends' friends within six  
03:28:44 9 steps, you can reach any people around the world. So that  
03:28:47 10 is called six degrees of separation. So GREE was social  
03:28:52 11 network, so we -- it was named after that -- that theory.

03:28:56 12 Q. Is there any connection between GREE and another  
03:28:58 13 company by that name that makes air conditioners?

03:29:01 14 A. Oh, I know the company, Chinese company, but it is --  
03:29:04 15 there is no relation.

03:29:06 16 Q. Now, does GREE still host its social media platform?

03:29:11 17 A. Yes, GREE is still operating the social network named  
03:29:16 18 GREE.

03:29:16 19 Q. And how many users are there today of the GREE  
03:29:19 20 platform?

03:29:19 21 A. There are more than 30 million registered users on  
03:29:25 22 GREE.

03:29:26 23 Q. When did GREE enter the gaming industry?

03:29:28 24 A. Back in 2007.

03:29:30 25 Q. And what was the state of the gaming industry when GREE

03:29:34 1 entered that market?

03:29:35 2 A. At that time, most of the gaming industry that people  
03:29:40 3 played games on PC or consoles, not many on the mobile  
03:29:45 4 phone.

03:29:46 5 And also the games are all premium. I would say  
03:29:53 6 premium means they need to buy -- pay money for the game  
03:29:56 7 before you play the game.

03:29:59 8 And then the most of the games are static. What I  
03:30:02 9 would say -- what -- what I would say static means the game  
03:30:07 10 is kind of completed when you buy the game, and then a game  
03:30:11 11 is not growing or game is not changing after you buy.

03:30:15 12 Q. Did you say that the games at that time were premium,  
03:30:19 13 with a P?

03:30:20 14 A. Premium, yes.

03:30:21 15 Q. Okay. And what does "premium" mean in the gaming  
03:30:24 16 industry?

03:30:24 17 A. Premium means you need to pay money upfront before you  
03:30:32 18 play the game. So this way you go to the -- for example,  
03:30:34 19 Target or other video game shop to buy the game.

03:30:37 20 Q. What was GREE's first game?

03:30:42 21 A. The games -- GREE's first game is Fishing Star.

03:30:46 22 Q. And what made -- well, first of all, did you work on  
03:30:50 23 developing Fishing Star?

03:30:50 24 A. Yes. I was -- I was one of the member or creator of  
03:30:54 25 this game.

03:30:55 1 Q. Did you do any programming for the game?

03:30:57 2 A. Yes, I programmed for the game.

03:30:59 3 Q. And what made you and your colleagues agree to decide

03:31:01 4 to make your first game a fishing game?

03:31:04 5 A. Yeah, the fishing is kind of universal hobby, and then

03:31:10 6 it's naturally -- you know, it has game design. You need

03:31:13 7 to pick your, you know, fishing rod or other stuff to, you

03:31:17 8 know, catch the fish. So the whole activity around the

03:31:21 9 fishing is the game.

03:31:22 10 Q. Do you have a personal interest in fishing, as well?

03:31:24 11 A. Yes, I'm -- I'm a big fan of the fishing, and as a

03:31:28 12 luxury, I brought my fishing rod this time to go fishing

03:31:32 13 this weekend because Texas is very big place for the

03:31:36 14 fishing.

03:31:36 15 Q. And what type of game is Fishing Star?

03:31:39 16 A. So Fishing Star is the world's first mobile social

03:31:45 17 game. So there are several character -- characteristic.

03:31:48 18 One is mobile first. So you can play this game on

03:31:53 19 your mobile phone.

03:31:54 20 And second one is freemium. So freemium is

03:32:01 21 opposite of premium, where you can play the game for free,

03:32:03 22 and you can purchase an item while you're playing the game,

03:32:09 23 if you want, but you can play the game for free.

03:32:11 24 And the third one is social. The game is always

03:32:15 25 changing and updating, and also you can play the game with

03:32:20 1 your friends.

03:32:21 2 Q. And what are the social features of Fishing Star?

03:32:25 3 A. The social feature of Fishing Star means you can

03:32:29 4 compete your friends against -- against your friends, or

03:32:35 5 you can cooperate with your friends to play the game.

03:32:38 6 Q. Can you give us some examples of how you can do that?

03:32:42 7 A. For example, on the completion part, you can play with

03:32:46 8 your friends, compete based on the size or weight of the

03:32:52 9 fish you catch, or you can go fishing tournament with your

03:32:57 10 friends to cooperate and then play together to compete

03:33:00 11 against other teams.

03:33:02 12 Q. Is Fishing Star still available for players to use as a

03:33:08 13 game?

03:33:08 14 A. Yes, it's still available.

03:33:10 15 Q. And what platforms can it be found on?

03:33:14 16 A. It's available on -- with mobile web or app stores on

03:33:18 17 the iPhones or Google Play on the Android devices and also

03:33:24 18 Nintendo Switch and some other PR platforms or Facebook

03:33:26 19 Messenger and other -- some other platforms.

03:33:30 20 Q. And is Fishing Star available on any of those platforms

03:33:34 21 in the United States for users to play?

03:33:35 22 A. Yes, there are several platforms where Fishing Star is

03:33:39 23 available in the U.S. For example, we have Nintendo Switch

03:33:42 24 version in U.S. and LINE or Facebook Messenger version that

03:33:49 25 are all available in the U.S.

03:33:50 1 Q. All right. What was the next mobile social game that  
03:33:53 2 GREE released after Fishing Star?

03:33:55 3 A. So we released the second title was called Clinoppe,  
03:34:00 4 which is pet game.

03:34:02 5 Q. And is that the one on the left of the slide that  
03:34:05 6 we're --

03:34:05 7 A. Yes.

03:34:05 8 Q. -- displaying?

03:34:07 9 A. Left side.

03:34:07 10 Q. Did you say it was a pet game?

03:34:09 11 A. It's a pet game.

03:34:10 12 Q. How do you play Clinoppe?

03:34:11 13 A. So this yellow character is -- this kind of creature is  
03:34:16 14 the pet, Clinoppe, and you can have your own pet, and then  
03:34:20 15 you can dress him or you're -- you can feed him or you can  
03:34:26 16 give him bath or you can give him candy or stuff.

03:34:31 17 Q. Right. And did you work on Clinoppe?

03:34:33 18 A. Yes, I was main creator of the Clinoppe.

03:34:38 19 Q. How -- what type of -- well, strike that.

03:34:40 20 Is -- was Clinoppe a mobile game?

03:34:43 21 A. Yes, it was mobile game.

03:34:44 22 Q. And is it a social game?

03:34:46 23 A. It was social game.

03:34:48 24 Q. When did you -- when did GREE release Clinoppe?

03:34:51 25 A. It was released in 2007.

03:34:54 1 Q. Is -- has Clinoppe been a successful game?

03:34:57 2 A. It's been very successful.

03:34:59 3 Q. And is Clinoppe still available for users to play?

03:35:01 4 A. Yes, it's still available after 13 years.

03:35:05 5 Q. Okay. I don't think I asked you this, but Fishing

03:35:08 6 Star, is Fishing Star a successful game, as well?

03:35:10 7 A. Yes.

03:35:12 8 Q. Okay. All right. What was the next game that you

03:35:15 9 created after Clinoppe?

03:35:16 10 A. It was Haconiwa, which is on the right side, which is

03:35:21 11 the gardening game.

03:35:23 12 Q. What is -- is Haconiwa a Japanese word?

03:35:26 13 A. Haconiwa is a Japanese word means in a small sandbox

03:35:30 14 garden.

03:35:31 15 Q. And how do you play Haconiwa?

03:35:33 16 A. You can plant flowers or trees and also you can

03:35:40 17 decorate by furniture or, you know, fancy stuff.

03:35:43 18 Q. Is Haconiwa a mobile social game?

03:35:45 19 A. Yes, it is mobile social game.

03:35:47 20 Q. What are the social aspects of it?

03:35:50 21 A. You can visit others' garden, and also you can gift the

03:35:55 22 flowers or seed or the fruits to other players.

03:35:59 23 Q. Has Haconiwa been a successful game?

03:36:02 24 A. It's been very successful.

03:36:04 25 Q. Is Haconiwa still available for players to play?

03:36:07 1 A. Yes, it is still available.

03:36:09 2 Q. All right. All right. Now, when was Haconiwa

03:36:11 3 released?

03:36:12 4 A. It was released in 2008.

03:36:15 5 Q. What happened in the gaming industry after GREE

03:36:18 6 launched these mobile social games?

03:36:20 7 A. Yes. The -- the Fishing Star was world first mobile

03:36:27 8 social game. So there were no market of that. But just

03:36:33 9 two years, three years after we released the mobile social

03:36:37 10 games, the social game industry became very, very big.

03:36:42 11 So after few years, there were, you know, more

03:36:46 12 than a hundred companies -- businesses in that space, and

03:36:51 13 also the market size became more than, you know, hundred

03:36:54 14 million users or billion users.

03:36:57 15 Q. Has GREE ever tried to expand its offices outside of

03:37:01 16 Japan?

03:37:02 17 A. Yes, sir.

03:37:02 18 Q. And what -- has GREE had -- had -- excuse me. Has GREE

03:37:07 19 had an office in the United States?

03:37:08 20 A. Yes. We opened our U.S. office in 2011.

03:37:14 21 Q. Were you involved in that?

03:37:16 22 A. Yes. I was one of the founding member of the U.S.

03:37:21 23 operation. So, actually, I came to the U.S., and I

03:37:25 24 looked -- looked for the office.

03:37:27 25 Q. And how long did you say you stayed there?

03:37:30 1 A. I stayed there for three years.

03:37:32 2 Q. How big did that office become at its largest size?

03:37:37 3 A. Yeah, the -- at the peak time, we had around 400

03:37:44 4 employees in the U.S. office.

03:37:45 5 Q. Did GREE develop games out of that office?

03:37:48 6 A. Yes.

03:37:48 7 Q. And were any of those games successful?

03:37:51 8 A. Yes, we had many successful games.

03:37:55 9 MR. MOORE: Could you please show the next slide,

03:37:58 10 Mr. Groat?

03:37:59 11 Q. (By Mr. Moore) What does this slide show, Mr. Araki?

03:38:01 12 A. This slide shows the examples of our games available in

03:38:09 13 the U.S. at that time on the left side, and also the right

03:38:14 14 side is -- I think it was sometime in 2012 or '13 of

03:38:22 15 iPhone's App Store, the grossing chart, which is basically

03:38:28 16 the ranking of revenue by games. And then the three of our

03:38:33 17 games were ranked at 5 and 8 and 9.

03:38:36 18 Q. So those three with the red circles, are those GREE

03:38:41 19 games that were available at that time?

03:38:42 20 A. Yes, those were GREE games.

03:38:43 21 Q. What was the U.S. gaming market like when GREE came to

03:38:46 22 the United States at that time?

03:38:48 23 A. When I came to U.S. market, the -- most of the games

03:38:52 24 were premium and standard games, so there were very few

03:39:02 25 social or freemium games.

03:39:03 1 Q. And did that change?

03:39:04 2 A. Yes, it did change and -- in the two or three years.

03:39:08 3 So 2013, there were -- most of the games on the revenue

03:39:13 4 ranking, they -- they were -- most of them were the

03:39:17 5 freemium games.

03:39:17 6 Q. And who were GREE's competitors when it was operating

03:39:23 7 in the United States?

03:39:23 8 A. At that time, our competitors, for example, Zynga,

03:39:31 9 Storm 8, KABAM, Glu Mobile, and Supercell was one of them,

03:39:40 10 and Tiny Co., Pocket Gems, and other companies.

03:39:41 11 Q. And when did GREE decide to close the office in the

03:39:44 12 United States?

03:39:44 13 A. So we decided to close the U.S. office in 2017.

03:39:56 14 Q. Okay.

03:39:56 15 MR. MOORE: We can take that slide down,

03:39:58 16 Mr. Groat.

03:39:59 17 Q. (By Mr. Moore) How many games in total has GREE

03:40:01 18 released throughout its history?

03:40:03 19 A. In total, I think we have released more than a hundred

03:40:10 20 games.

03:40:10 21 Q. And how many games does GREE have available on the

03:40:13 22 market right now?

03:40:13 23 A. Right now, we have, I think, between 10 to 20 games.

03:40:20 24 Q. Does GREE ever work with any third-party companies to

03:40:23 25 develop or launch games?

03:40:25 1 A. Yes. GREE as a product is the plat -- gaming platform  
03:40:31 2 in Japan, so we have a lot of third-party developers. They  
03:40:35 3 offer games on our platform.  
03:40:39 4 Q. And does GREE have any games today that are available  
03:40:43 5 globally?  
03:40:43 6 A. Yes, we have several games.  
03:40:47 7 Q. Are there any games that are available in the United  
03:40:49 8 States?  
03:40:49 9 A. Yes.  
03:40:50 10 Q. Can you give me an example of one -- one of those  
03:40:53 11 games?  
03:40:53 12 A. For example, we have the game called Another Eden and  
03:40:58 13 we have a game called DanMachi or we have games called  
03:41:05 14 sinoALICE, and also the game called Sword Art Online.  
03:41:09 15 Q. Have any of GREE's recent games won awards?  
03:41:14 16 A. Yes, we have several games that are awarded. For  
03:41:20 17 example, Another Eden got several award by Google Play.  
03:41:23 18 Q. And other than games, what are GREE's business  
03:41:27 19 categories today?  
03:41:29 20 A. So we are doing major business with advertisement and  
03:41:34 21 also the live entertainment business.  
03:41:39 22 Q. About how many patents or patent applications does GREE  
03:41:43 23 have around the world?  
03:41:45 24 A. We have more than 1,800 patents and applications.  
03:41:50 25 Q. Why does GREE file for patents?

03:41:53 1 A. So as a company doing business in the tech and  
03:41:58 2 entertainment or gaming industry, you know, innovation or  
03:42:03 3 new technology is very, very important for us. So filing  
03:42:13 4 patent is a very important way to protect our business.

03:42:16 5 Q. Why does GREE file for patents in the United States?

03:42:19 6 A. Because we -- we have products in U.S.

03:42:27 7 MR. MOORE: Could we go to the next slide, please?

03:42:30 8 Q. (By Mr. Moore) You have been in this courtroom  
03:42:35 9 throughout this trial --

03:42:38 10 A. Correct.

03:42:38 11 Q. -- Mr. Araki?

03:42:39 12 A. Yes.

03:42:40 13 Q. All right. Do you see the image there of the '594  
03:42:47 14 patent and the name of the inventor?

03:42:48 15 A. Yes.

03:42:49 16 Q. Who is Mr. Taiki Eda, if I said that correctly?

03:42:57 17 A. Mr. Eda was GREE's employee.

03:42:59 18 Q. And is he still? I'm sorry, strike that.

03:43:02 19 What -- what was his job while he was at GREE?

03:43:05 20 A. He was game designer at GREE.

03:43:08 21 Q. Is he still employed by GREE?

03:43:10 22 A. Not anymore.

03:43:12 23 Q. Where did he go after GREE?

03:43:13 24 A. After GREE, he joined EA, Electronic Arts.

03:43:18 25 Q. I'm sorry, Electronic Arts?

03:43:20 1 A. Electronic Arts, U.S. company.

03:43:23 2 MR. MOORE: Could you please pull up, Mr. Groat,

03:43:27 3 Plaintiff's Exhibit 19?

03:43:28 4 Q. (By Mr. Moore) What is this document, Mr. Araki?

03:43:33 5 A. This is application form of invention which is kind of

03:43:42 6 internal procedure of the company.

03:43:43 7 Q. Is this an internal GREE form?

03:43:45 8 A. Yes.

03:43:46 9 Q. And what is the purpose of the form?

03:43:48 10 A. When any employee come up with the new idea or a new

03:43:53 11 innovation, so he or she needs to submit the idea to the

03:43:59 12 company with this form.

03:44:01 13 Q. And what are the stamps at the top right?

03:44:05 14 A. So it's -- indicates that there are five people related

03:44:10 15 to this application, and then each of them should review or

03:44:15 16 approve this application.

03:44:17 17 Q. And are these -- who are these five people?

03:44:20 18 A. From left to right, the first one is inventor, so

03:44:25 19 Mr. Eda. And then next -- second one is the manager of

03:44:31 20 him, and the third is the head of division of him. And the

03:44:36 21 fourth one is the head of corporate division. I would say

03:44:41 22 he was -- he is the CFO, and also he was the manager --

03:44:45 23 manager of the legal team. And the last one is the CTO.

03:44:50 24 Q. And why does GREE have this approval process for its

03:44:54 25 invention forms for new -- new inventions?

03:44:57 1 A. So when someone came up with new idea, we have internal  
03:45:02 2 procedure to review and assess. If the idea is, you know,  
03:45:11 3 valuable or, you know, it is appropriate to file a patent.  
03:45:14 4 MR. MOORE: You can take that down, Mr. Groat.  
03:45:16 5 Thank you.  
03:45:17 6 Q. (By Mr. Moore) Does GREE do this in every case that an  
03:45:19 7 inventor submits a new idea?  
03:45:21 8 A. Yes.  
03:45:22 9 Q. And is that part of the decision about -- that GREE  
03:45:26 10 makes whether to file a patent or not on that idea?  
03:45:29 11 A. Yes.  
03:45:29 12 Q. And does GREE file a patent on every single idea that  
03:45:33 13 its employees come up with?  
03:45:34 14 A. No.  
03:45:36 15 MR. MOORE: Could we please pull up, Mr. Groat,  
03:45:38 16 Plaintiff's Exhibit 660?  
03:45:43 17 Q. (By Mr. Moore) What is this document, Mr. Eda -- I'm  
03:45:47 18 sorry, Mr. Araki?  
03:45:48 19 A. So this is the English translation version of the  
03:45:51 20 document, as I mentioned in the previous one.  
03:45:55 21 Q. And to which inventor or patent does this invention  
03:46:00 22 report relate to?  
03:46:01 23 A. Mr. Eda.  
03:46:03 24 Q. Does it relate to the '594 patent?  
03:46:07 25 A. Yes.

03:46:07 1 Q. Did the invention form that Mr. Eda prepared come out  
03:46:15 2 of a game development project at GREE?  
03:46:18 3 A. Yes.  
03:46:19 4 Q. What game development process?  
03:46:21 5 A. The game was called Tenmega.  
03:46:25 6 Q. What kind of a game was Tenmega?  
03:46:28 7 A. That game was a simulation and also kind of combination  
03:46:32 8 of simulation and roleplaying game.  
03:46:35 9 Q. Was Tenmega released?  
03:46:38 10 A. Yes, it was released in 2014.  
03:46:43 11 Q. And what happened to Tenmega?  
03:46:46 12 A. After six to eight month later after the launch, I  
03:46:51 13 decided to discontinue the game.  
03:46:54 14 Q. And why did you do that?  
03:46:55 15 A. Because the game didn't meet our expectation of the  
03:47:01 16 commercial success.  
03:47:02 17 Q. And did the invention in Mr. Eda's invention form for  
03:47:11 18 the '594 patent, was that included in the version of  
03:47:14 19 Tenmega that was released publicly?  
03:47:16 20 A. No, it was not included at that time.  
03:47:19 21 Q. What was the status of it at the time the game was  
03:47:22 22 released?  
03:47:25 23 A. The game's feature, which is based on the patent, was  
03:47:30 24 in development, but it was not released yet.  
03:47:34 25 MR. MOORE: Could we please go to -- back to the

03:47:37 1 next slide, Mr. Groat?

03:47:44 2 Q. (By Mr. Moore) All right. Do you see the highlighted

03:47:47 3 name there, Yusuke Hisaoka?

03:47:52 4 A. Yes.

03:47:53 5 Q. And who is Mr. Hisaoka?

03:47:54 6 A. Mr. Hisaoka is -- was the -- GREE's game designer.

03:47:58 7 Q. And is he still employed by GREE?

03:48:00 8 A. Not anymore.

03:48:02 9 Q. Okay.

03:48:02 10 MR. MOORE: Could you please pull up Plaintiff's

03:48:05 11 Exhibit 16?

03:48:09 12 Q. (By Mr. Moore) What is this document, Mr. Araki?

03:48:11 13 A. So this is the application form of the new invention by

03:48:17 14 Mr. Hisaoka.

03:48:18 15 Q. Is this the application form that relates to the '137

03:48:22 16 and '481 battle patents?

03:48:24 17 A. Yes.

03:48:29 18 MR. MOORE: Could we please pull up Plaintiff's

03:48:31 19 Exhibit 661?

03:48:35 20 Q. (By Mr. Moore) And what is this document?

03:48:36 21 A. So this -- this is English translation of the document.

03:48:42 22 Q. Did the invention form that Mr. Hisaoka and the other

03:48:46 23 inventors submitted come out of a game development project

03:48:50 24 at GREE?

03:48:51 25 A. Yes.

03:48:51 1 Q. What project was that?

03:48:52 2 A. That game was called One Piece Adventure Log.

03:49:03 3 Q. What type of game was it?

03:49:04 4 A. That game was a roleplaying game on mobile.

03:49:09 5 Q. Was that game released?

03:49:11 6 A. Yes.

03:49:11 7 Q. How long was it on the market?

03:49:13 8 A. It was on the market for four years.

03:49:15 9 MR. MOORE: Could we please go to the next slide,

03:49:19 10 Mr. Groat?

03:49:19 11 Q. (By Mr. Moore) Who is Mr. Masaru Takeuchi?

03:49:24 12 A. Mr. Takeuchi is one of our employees.

03:49:29 13 Q. Is he still an employee of GREE?

03:49:32 14 A. Yes, he is still employed at GREE.

03:49:34 15 Q. And what is his job at GREE?

03:49:36 16 A. His job is game designer.

03:49:39 17 MR. MOORE: Could we please pull up Plaintiff's

03:49:45 18 Exhibit 14?

03:49:46 19 Q. (By Mr. Moore) What is this document?

03:49:47 20 A. This is application form of the new invention.

03:49:53 21 Q. And which invention does this relate to?

03:49:55 22 A. That's -- that is related to the Patent No. -- I wrote

03:50:03 23 the number -- the donation patent.

03:50:08 24 Q. I think -- if you could look at PTX No. 3, Mr. Araki,

03:50:19 25 that would help.

03:50:20 1 A. Oh, yes, this -- yeah, this one.

03:50:22 2 Q. What's --

03:50:23 3 A. Patent No. '655 patent.

03:50:25 4 Q. That's the '655 donation patent?

03:50:27 5 A. Yes.

03:50:29 6 Q. All right.

03:50:29 7 MR. MOORE: Can we please pull up Plaintiff's  
03:50:33 8 Exhibit 663?

03:50:34 9 Q. (By Mr. Moore) What is this document?

03:50:35 10 A. This is English translation of the document,  
03:50:37 11 application form.

03:50:38 12 Q. Did you see Mr. Takeuchi's name?

03:50:40 13 A. Yes.

03:50:42 14 Q. All right. Did the invention form come out of a game  
03:50:48 15 development project at GREE?

03:50:51 16 A. Yes.

03:50:52 17 Q. And what was that project?

03:50:53 18 A. That project is the Avatar Project.

03:50:55 19 Q. What is the Avatar Project?

03:50:57 20 A. The Avatar is one of the products on the GREE platform  
03:51:03 21 which is -- where player can create their own Avatar, I  
03:51:11 22 mean, look. So player can choose hair style, face, and  
03:51:15 23 outfit to create their own Avatar to communicate with other  
03:51:19 24 players.

03:51:20 25 Q. And is Avatar still offered on the GREE platform?

03:51:23 1 A. Yes.

03:51:24 2 Q. How long has that been available?

03:51:26 3 A. It's been available more than 13 years, so long time.

03:51:32 4 Q. Did you work on the development of the Avatar program?

03:51:35 5 A. Yes, I was one of the programmer and also designer of

03:51:38 6 the product.

03:51:52 7 MR. MOORE: All right. Could you please go back

03:51:54 8 to the next slide, Mr. Groat.

03:51:56 9 Q. (By Mr. Moore) Who is Mr. Tsuchiya?

03:52:01 10 A. Mr. Tsuchiya was the game designer at GREE.

03:52:04 11 Q. Is he still employed at GREE?

03:52:06 12 A. No.

03:52:06 13 Q. And who is Mr. Tadashi Nagano?

03:52:09 14 A. Mr. Nagano is the game designer at GREE.

03:52:15 15 Q. And is he still employed by GREE?

03:52:18 16 A. He's still employed at GREE.

03:52:20 17 MR. MOORE: Can we pull up, please, Plaintiff's

03:52:24 18 Exhibit 12.

03:52:24 19 Q. (By Mr. Moore) What is this document?

03:52:26 20 A. So this document is application form of the new

03:52:31 21 invention by Mr. Tsuchiya.

03:52:34 22 Q. And Mr. Nagano, as well?

03:52:36 23 A. Yes, there is Mr. Nagano in the inventor's list.

03:52:42 24 MR. MOORE: Could we please pull up Plaintiff's

03:52:44 25 Exhibit 662?

03:52:45 1 Q. (By Mr. Moore) What is this document?

03:52:48 2 A. So this is English version of the document.

03:52:51 3 Q. All right. Did the invention form come out of a game

03:52:59 4 development project at GREE?

03:53:00 5 A. Yes, it -- it came from the game development project.

03:53:04 6 Q. Which game development project?

03:53:06 7 A. A game called War Corps.

03:53:08 8 Q. What type of a game was that?

03:53:11 9 A. War Corps was the -- the shooting game.

03:53:15 10 Q. Was that game ever released?

03:53:17 11 A. It was not released.

03:53:18 12 Q. Why not?

03:53:19 13 A. Before launch, we had decided to discontinue the

03:53:24 14 project.

03:53:25 15 Q. And why did you decide to do that?

03:53:28 16 A. Because based on the, you know, resource allocation

03:53:32 17 within the whole company, at that time, we structured a lot

03:53:36 18 of games' portfolio, and then we decided not to release the

03:53:41 19 game.

03:53:42 20 Q. All right. Thank you.

03:53:43 21 MR. MOORE: You may take that down, please,

03:53:45 22 Mr. Groat.

03:53:46 23 Q. (By Mr. Moore) When did GREE become aware of

03:53:49 24 Supercell?

03:53:49 25 A. GREE became aware of Supercell around 2012, as I

03:53:57 1 understand.

03:53:57 2 Q. And did GREE and Supercell have any interactions at  
03:54:00 3 that time?

03:54:00 4 A. My understanding is that at that time, we had some, you  
03:54:05 5 know, discussion with them.

03:54:06 6 Q. And what was the subject of those discussions?

03:54:10 7 A. My understanding is that Supercell came to Japan, and  
03:54:14 8 then we met and discussed if we can help them to publish  
03:54:19 9 their game in Japan market.

03:54:21 10 Q. What was the outcome of those discussions?

03:54:23 11 A. The Supercell decided not to work with us, and then  
03:54:30 12 launched a game by themselves.

03:54:31 13 Q. And what year did that take place in?

03:54:33 14 A. I was not in charge of that title.

03:54:36 15 Q. All right. Now, are you aware of some of Supercell's  
03:54:39 16 games?

03:54:39 17 A. Yes.

03:54:39 18 Q. Have you played them?

03:54:40 19 A. Yes.

03:54:40 20 Q. Have you enjoyed playing them?

03:54:42 21 A. Yes. Actually, I played a lot of their games.

03:54:46 22 Q. Is there any later point in time when GREE believed  
03:54:49 23 that Supercell was infringing some of its patents?

03:54:54 24 A. Yes.

03:54:54 25 Q. And what year was that?

03:54:55 1 A. When?

03:54:56 2 Q. Yes, what year?

03:54:57 3 A. Year was 2016, I think.

03:55:02 4 Q. What did GREE decide to do at that time?

03:55:04 5 A. At that time, GREE has sent letter to Supercell.

03:55:10 6 MR. MOORE: Could you please pull up Plaintiff's

03:55:13 7 Exhibit 475? Blow up the first half, please.

03:55:20 8 Q. (By Mr. Moore) What is this document?

03:55:21 9 A. This is a letter GREE has sent in 2016 to Supercell.

03:55:27 10 Q. And who did it send -- who did GREE's attorneys send

03:55:31 11 that letter to?

03:55:41 12 A. Its seems Naoki Yoshida.

03:55:41 13 Q. Oh, I'm sorry. That was the author, right? Who was

03:55:42 14 the -- who received the letter at Supercell?

03:55:44 15 A. Oh, who received. It was Mr. Paananen, it's the CEO of

03:55:48 16 Supercell.

03:55:49 17 MR. MOORE: And could you scroll down the

03:55:51 18 document, please, Mr. Groat?

03:55:53 19 Q. (By Mr. Moore) What are those numbers that are shown

03:55:54 20 in the document?

03:55:55 21 A. Those numbers is -- those numbers are number of

03:56:00 22 Japanese patent and also U.S. patent application.

03:56:04 23 Q. Okay. Why did Supercell send this letter to

03:56:07 24 Supercell -- I'm sorry, why did GREE send this letter to

03:56:14 25 Supercell?

03:56:14 1 A. Because GREE found that Supercell infringed our  
03:56:19 2 patents.

03:56:19 3 Q. And what did GREE hope to achieve through this letter?

03:56:23 4 A. We offered to negotiate for the licensing of our  
03:56:27 5 patents.

03:56:28 6 MR. MOORE: And could you go to the next page,  
03:56:30 7 please, Mr. Groat? Would you please blow up the first two  
03:56:36 8 paragraphs there?

03:56:37 9 Q. (By Mr. Moore) And did GREE tell Supercell in the  
03:56:42 10 letter about its desire to negotiate?

03:56:45 11 A. Yes. I think the latter part of the second paragraph  
03:56:51 12 that GREE would like to reach a reasonable agreement with  
03:56:57 13 Supercell than to take on a patent fight.

03:57:03 14 MR. MOORE: Now, could we go back to the slides,  
03:57:09 15 please? If you could go to the next one. I'm sorry, let's  
03:57:12 16 go one more. Thank you.

03:57:14 17 Q. (By Mr. Moore) Did any of the patents that GREE told  
03:57:17 18 Supercell about in this letter have any relationship to any  
03:57:21 19 of the patents that are now being asserted in this lawsuit?

03:57:25 20 A. Yes. In this letter, there are two Japanese patents,  
03:57:31 21 which is equivalent with the U.S. patents, three U.S.  
03:57:37 22 patents, and also the one U.S. patent application at that  
03:57:41 23 time. Currently it's called the, you know, file -- I mean,  
03:57:47 24 issued U.S. patent.

03:57:48 25 Q. So the first -- the '137, the '481, and the '655, was

03:57:52 1 there a relationship with -- between those patents in the  
03:57:55 2 U.S. and then the Japanese version of those patents that  
03:57:58 3 are in the letter?

03:57:58 4 A. Yes.

03:58:00 5 MR. SACKSTEDER: Objection, Your Honor.

03:58:01 6 Foundation.

03:58:03 7 THE COURT: Overruled. And not timely. He'd  
03:58:07 8 already answered the question.

03:58:08 9 Let's proceed.

03:58:10 10 Q. (By Mr. Moore) And is there --

03:58:11 11 MR. MOORE: Thank you, Your Honor.

03:58:11 12 Q. (By Mr. Moore) Is there a relationship between the  
03:58:13 13 U.S. patent application number that is in the letter and  
03:58:17 14 the '594 patent?

03:58:19 15 A. Yes.

03:58:20 16 Q. Is that the application number that eventually resulted  
03:58:24 17 in the granted '594 patent?

03:58:28 18 A. Yes.

03:58:28 19 Q. All right.

03:58:29 20 MR. MOORE: You may take that down.

03:58:31 21 Q. (By Mr. Moore) After GREE sent this letter, did -- did  
03:58:38 22 Supercell agree to a license right after GREE sent this  
03:58:41 23 letter?

03:58:42 24 A. No.

03:58:42 25 Q. What did Super -- Supercell do after GREE sent the

03:58:48 1 letter?

03:58:49 2 A. They -- my understanding is that they -- they refused

03:58:54 3 to license our patents.

03:58:55 4 Q. Did they do anything else that you're aware of?

03:58:59 5 A. I don't know.

03:59:00 6 Q. Okay. And what did GREE do eventually?

03:59:04 7 A. So, eventually, GREE filed the lawsuit in Japan.

03:59:09 8 Q. And why did GREE file that lawsuit?

03:59:12 9 A. Because we wanted to -- Supercell to license our

03:59:18 10 patents. That's my understanding.

03:59:20 11 Q. And what was the final result of the lawsuits between

03:59:22 12 GREE and Supercell in Japan?

03:59:24 13 A. At the end, GREE and Supercell reached agreement that

03:59:30 14 GREE -- Supercell license the GREE's patents.

03:59:35 15 MR. MOORE: And could you go to the next slide,

03:59:44 16 please? Thank you.

03:59:46 17 Q. (By Mr. Moore) Is this part of the license agreement

03:59:50 18 between GREE and Supercell for Japan?

03:59:52 19 A. Yes.

03:59:52 20 Q. And what patents did GREE license to Supercell in

03:59:56 21 Japan?

03:59:57 22 A. So GREE licensed the -- all of its patents to Supercell

04:00:02 23 in Japan.

04:00:03 24 Q. How many patents of GREE's total patents in Japan were

04:00:08 25 the subject of the lawsuits at the time this license

04:00:11 1 agreement was signed?

04:00:14 2 A. I don't know exact number, but I would say it's more  
04:00:19 3 than thousand.

04:00:20 4 Q. I'm sorry?

04:00:22 5 A. Oh, in the letter?

04:00:23 6 Q. So -- so that's the total number. How many were  
04:00:27 7 actually in lawsuits in Japan at the time of the license  
04:00:30 8 agreement?

04:00:30 9 A. My understanding is that it was 15 or so.

04:00:35 10 Q. Okay. And did Supercell pay GREE a royalty for --

04:00:39 11 A. Yes.

04:00:39 12 Q. -- its patents?

04:00:41 13 A. Yes.

04:00:41 14 Q. And what was the amount of the royalty that Supercell  
04:00:44 15 paid to GREE?

04:00:45 16 A. My understanding is that around four to five million  
04:00:50 17 U.S. dollars.

04:00:51 18 Q. And that was for the Japanese market?

04:00:53 19 A. That was for the Japanese market.

04:00:57 20 Q. Did you have any role in the license agreement?

04:01:05 21 A. I -- I approved the agreement as a board of directors  
04:01:11 22 because the -- this agreement -- to sign this agreement,  
04:01:16 23 the board of directors has -- had to approve the deal.

04:01:20 24 Q. And did you vote to approve it?

04:01:22 25 A. Yes.

04:01:22 1 Q. Did the rest of the board of directors vote to approve  
04:01:25 2 it?

04:01:25 3 A. Yes.

04:01:26 4 Q. All right. Did Supercell agree at this time to take a  
04:01:30 5 license to any of GREE's United States patents?

04:01:34 6 A. No.

04:01:34 7 Q. Did GREE still want to enter into a license with  
04:01:38 8 Supercell for the United States patents?

04:01:41 9 A. Yes.

04:01:42 10 Q. What did GREE do next?

04:01:44 11 A. So after the settlement in Japanese litigation, so we  
04:01:50 12 filed this case, this lawsuit in U.S.

04:01:53 13 Q. Before GREE had -- well, strike that.

04:01:57 14 Has GREE ever filed a patent infringement lawsuit  
04:01:59 15 against anyone except for Supercell?

04:02:01 16 A. Never.

04:02:02 17 Q. Other than the litigations in Japan and this -- the  
04:02:06 18 lawsuits in the United States, has GREE filed -- I'm sorry.

04:02:09 19 Let me ask that.

04:02:10 20 Has GREE filed any patent lawsuits other than the  
04:02:13 21 lawsuits it filed against Supercell in Japan and the  
04:02:17 22 lawsuits it has filed against Supercell in the United  
04:02:19 23 States?

04:02:19 24 A. Nothing else.

04:02:20 25 Q. And what is GREE's goal out of this lawsuit?

04:02:24 1 A. Out of this lawsuit, we have to -- we want license and  
04:02:32 2 royalty.

04:02:33 3 Q. Thank you very much, Mr. Araki.

04:02:34 4 MR. MOORE: I pass the witness, Your Honor.

04:02:37 5 THE COURT: Cross-examination by the Defendant.

04:02:52 6 Proceed when you're ready, Mr. Sacksteder.

04:02:54 7 MR. SACKSTEDER: Thank you, Your Honor.

04:02:54 8 CROSS-EXAMINATION

04:02:55 9 BY MR. SACKSTEDER:

04:02:55 10 Q. Good afternoon, Mr. Araki.

04:02:56 11 A. Good afternoon.

04:02:56 12 Q. We met in Tokyo --

04:02:59 13 A. Yeah.

04:03:00 14 Q. -- for your deposition, correct?

04:03:08 15 MR. SACKSTEDER: Your Honor, may Mr. McMichael  
04:03:11 16 approach with his exhibits?

04:03:12 17 THE COURT: Yes, he may.

04:03:12 18 MR. SACKSTEDER: Thank you, Your Honor.

04:03:19 19 THE COURT: -- since he's in mid-step anyway.

04:03:34 20 All right. Let's proceed.

04:03:35 21 Q. (By Mr. Sacksteder) Mr. Araki, none of GREE's games  
04:03:39 22 currently on the market in the U.S. practice any of the  
04:03:41 23 patents that you discussed that are asserted in this case,  
04:03:44 24 correct?

04:03:44 25 A. Sorry, what was the question?

04:03:46 1 Q. None of GREE's games that are available in the United  
04:03:52 2 States currently include any of the patents that are  
04:03:57 3 asserted in this case?  
04:04:00 4 A. No.  
04:04:01 5 Q. That's correct, right?  
04:04:02 6 A. That's correct, yes.  
04:04:04 7 Q. Thank you.  
04:04:05 8 You mentioned Avatar, correct?  
04:04:08 9 A. Correct.  
04:04:08 10 Q. And that is part of the social media platform?  
04:04:12 11 A. It's on the GREE platform.  
04:04:15 12 Q. And Avatar never actually ended up practicing the '655  
04:04:24 13 patent, correct?  
04:04:24 14 A. '655?  
04:04:30 15 Q. I think your counsel called it the donation patent.  
04:04:33 16 A. Donation. My understanding is that it used the patent.  
04:04:40 17 That's my understanding.  
04:04:44 18 Q. In Japan?  
04:04:46 19 A. In Japan.  
04:04:48 20 Q. You testified about a game called Clinoppe?  
04:05:02 21 A. Yes.  
04:05:02 22 Q. And that was removed from the U.S. market in 2014,  
04:05:09 23 correct?  
04:05:09 24 A. I cannot recall when was that, but it was available in  
04:05:14 25 the U.S. and also it was discontinued.

04:05:17 1 Q. It's no longer available in the United States?

04:05:19 2 A. Correct.

04:05:19 3 Q. And when it was available in the United States, it did

04:05:22 4 not include the patented feature of the '655 patent,

04:05:27 5 correct?

04:05:27 6 A. Correct.

04:05:28 7 Q. You testified about a product called Haconiwa?

04:05:36 8 A. Yes.

04:05:36 9 Q. That was never released in the United States, correct?

04:05:40 10 A. Correct.

04:05:40 11 Q. It was released only in Japan, correct?

04:05:43 12 A. Correct.

04:05:44 13 Q. And the feature that practiced the '655 patent was only

04:05:52 14 available in that product on a limited basis during

04:05:56 15 selected events, correct?

04:06:01 16 A. I'm not sure.

04:06:04 17 Q. In your deposition, you identified a single event in

04:06:07 18 this case that used that -- that patent, and it was around

04:06:11 19 Valentine's Day in 2014, correct?

04:06:14 20 A. I know it was used in the -- the Valentine event in

04:06:22 21 2014, but I'm not sure if it was used in the other way.

04:06:25 22 Q. It is not available on an ongoing basis in the game,

04:06:30 23 correct?

04:06:30 24 A. That's correct.

04:06:30 25 Q. You mentioned a game called War Corps?

04:06:37 1 A. Yes.

04:06:37 2 Q. And that was the game that the invention of the '873

04:06:41 3 patent was -- was developed for, correct?

04:06:46 4 A. Correct.

04:06:47 5 Q. War Corps was never released in the United States,

04:06:50 6 correct?

04:06:50 7 A. Correct.

04:06:51 8 Q. In fact, War Corps was never released in Japan either,

04:06:55 9 correct?

04:06:55 10 A. Correct.

04:06:57 11 Q. And I think you made the decision maybe not to release

04:07:00 12 it, right?

04:07:01 13 A. I was not the decision-maker.

04:07:04 14 Q. It was not released because it didn't look like it was

04:07:07 15 going to be successful, correct?

04:07:10 16 A. I don't know the exact reason, but it was not released.

04:07:15 17 Q. And that's the only game that GREE has ever had that

04:07:20 18 has practiced the invention claimed in the '873 patent,

04:07:23 19 correct?

04:07:23 20 A. Correct.

04:07:24 21 Q. And GREE has never released a game in the United States

04:07:29 22 that has practiced any asserted claim of the '137 or '481

04:07:34 23 patents, correct?

04:07:36 24 A. One -- let me just check the -- this patent. You said

04:07:48 25 '130 -- which --

04:07:50 1 Q. The '137 and the '481 patents?

04:07:51 2 A. Yeah, it was -- they were not released in the U.S.

04:07:59 3 Q. And the only game that has included the inventions

04:08:04 4 claimed in those two patents was a game called One Piece

04:08:10 5 Adventure Log, correct?

04:08:11 6 A. Correct.

04:08:12 7 Q. And One Piece Adventure Log was available for a few

04:08:18 8 years, and then about three years ago it was taken off the

04:08:21 9 market, correct?

04:08:21 10 A. Correct.

04:08:22 11 Q. I think it was released in 2013 and taken off the

04:08:27 12 market in 2017, correct?

04:08:30 13 A. Correct.

04:08:31 14 Q. And that was only in Japan, right?

04:08:33 15 A. Correct.

04:08:33 16 Q. GREE has never released a game in the United States

04:08:36 17 that practiced Claim 2 of the '594 patent, correct?

04:08:39 18 A. Correct.

04:08:57 19 Q. And you testified about a game called Tenmega?

04:09:00 20 A. Correct.

04:09:01 21 Q. And Tenmega was the game that the technique of the '594

04:09:05 22 patent was developed for, correct?

04:09:08 23 A. Correct.

04:09:09 24 Q. But Claim 2 was never included in Tenmega, correct?

04:09:18 25 A. Claim 2 -- I have some -- I -- I cannot precisely

04:09:37 1 answer the question right now.

04:09:43 2 Q. I didn't hear you testify on direct examination that

04:09:46 3 Tenmega practiced Claim 2 of the '594 patent, correct?

04:09:52 4 A. So what was the question?

04:09:53 5 Q. You didn't testify today that Tenmega did practice that

04:09:58 6 claimed invention, correct?

04:09:59 7 A. Correct.

04:10:00 8 Q. All right. And Tenmega was on the market for less than

04:10:04 9 a year in Japan, right?

04:10:06 10 A. Correct.

04:10:06 11 Q. And then you actually did make the decision to take

04:10:09 12 that one off the market, correct?

04:10:11 13 A. Correct.

04:10:11 14 Q. And that's because it was not doing well as a business

04:10:15 15 matter, correct?

04:10:15 16 A. It didn't meet our expectation.

04:10:18 17 MR. SACKSTEDER: Can we look at Slide DDX-11,

04:10:22 18 Slide 2, Mr. Smith?

04:10:28 19 Q. (By Mr. Sacksteder) So is -- can you look at this

04:10:31 20 and -- and confirm that this is a correct summary?

04:10:57 21 A. I disagree with the second row, which is about '655

04:11:02 22 patent. My understanding is that it was implemented in the

04:11:07 23 Clinoppe and Haconiwa.

04:11:09 24 Q. But never in the U.S., correct?

04:11:10 25 A. But never in the U.S.

04:11:11 1 Q. So the War Corps game was never released in the U.S.  
04:11:14 2 and never released in Japan, correct?

04:11:17 3 A. Correct.

04:11:17 4 Q. And the One Piece game was never released in the U.S.,  
04:11:21 5 and it was discontinued in the 2017, correct?

04:11:24 6 A. Correct.

04:11:24 7 Q. And the Tenmega game, you don't know whether it used  
04:11:28 8 the feature, but it was released and discontinued with --  
04:11:30 9 within one year in Japan, correct?

04:11:32 10 A. Correct.

04:11:35 11 MR. SACKSTEDER: Mr. Smith, can we look at GREE's  
04:11:37 12 opening demonstratives -- it's PDX-1, Slide 9 -- please?

04:11:47 13 Q. (By Mr. Sacksteder) You referred to some games that  
04:11:50 14 are available currently in the U.S., correct?

04:11:52 15 A. Correct.

04:11:52 16 Q. And one of them was sinoAlice; is that correct?

04:11:56 17 A. It's pronounced sinoAlice.

04:11:59 18 Q. SinoAlice?

04:12:00 19 A. Yeah.

04:12:01 20 Q. All right. And that's a game that's available in the  
04:12:03 21 U.S., correct?

04:12:04 22 A. Correct.

04:12:04 23 Q. Currently, correct? That doesn't include any of the  
04:12:07 24 inventions claimed in any of the patents in this case,  
04:12:10 25 right?

04:12:10 1 A. Correct.

04:12:10 2 Q. And there's another game called Another Eden, which is

04:12:16 3 also a game that's available in the U.S., correct?

04:12:18 4 A. Correct.

04:12:18 5 Q. And that one does not practice any of the inventions in

04:12:21 6 any of the -- the claimed -- in any of the patents,

04:12:26 7 correct?

04:12:26 8 A. Correct.

04:12:28 9 Q. So that's two games. There's one more, DanMachi, I

04:12:33 10 think you mentioned?

04:12:34 11 A. Yeah.

04:12:35 12 MR. SACKSTEDER: Can we go to Slide 3, please?

04:12:37 13 Q. (By Mr. Sacksteder) So that's available in the United

04:12:39 14 States, as well, correct?

04:12:40 15 A. Yes.

04:12:41 16 Q. And this is a press release about the release of

04:12:47 17 DanMachi, correct?

04:12:48 18 A. Yes, correct.

04:12:49 19 Q. And that's the North American version of DanMachi?

04:12:57 20 A. Yes.

04:12:57 21 Q. All right. But GREE also does not claim that DanMachi

04:12:57 22 practices any claims of any of the patents that are

04:13:01 23 asserted in this case, correct?

04:13:01 24 A. Correct.

04:13:06 25 MR. SACKSTEDER: Can we look at Slide 5 of the

04:13:08 1 demonstratives for Mr. Araki, please? It's PDX-3.

04:13:25 2 Q. (By Mr. Sacksteder) And you testified, sir, that

04:13:26 3 the -- the document that is shown on Slide 5 was from 2012,

04:13:30 4 correct?

04:13:30 5 A. Correct.

04:13:31 6 Q. All right. And that identified some games that were

04:13:34 7 available in the U.S. at that time?

04:13:37 8 A. Correct.

04:13:37 9 Q. One of them is Modern War, correct?

04:13:42 10 A. Correct.

04:13:43 11 Q. And one of them is Crime City, and one them is Knights

04:13:49 12 and Dragons, correct?

04:13:50 13 A. Correct.

04:13:51 14 Q. Were any of those games developed by GREE, as opposed

04:13:58 15 to a company that GREE acquired?

04:13:59 16 A. The Modern World and Crime City are developed by the

04:14:03 17 company we acquired.

04:14:04 18 Q. Funzio was the name of that company?

04:14:09 19 A. Funzio is the name of the company. And Knights &

04:14:12 20 Dragons was developed by GREE.

04:14:14 21 Q. Okay. And are any of those on the market anymore in

04:14:17 22 the U.S.?

04:14:17 23 A. I'm not sure. I think they are, but I'm not sure right

04:14:24 24 now.

04:14:25 25 Q. Okay.

04:14:25 1 MR. SACKSTEDER: Can we look at Slide 4?

04:14:37 2 Actually, that's okay, Mr. Smith. We can go on. Let's go

04:14:41 3 to Slide 5. Actually, I think I can move on.

04:14:44 4 Q. (By Mr. Sacksteder) So you testified about the -- the

04:14:51 5 license agreement in Japan between Supercell and GREE,

04:14:54 6 correct?

04:14:54 7 A. Right.

04:14:55 8 Q. Did you have any understanding of any of the other

04:15:04 9 terms of that license?

04:15:05 10 A. I'm not -- so I don't understand very deeply about the

04:15:09 11 licensing agreement.

04:15:11 12 Q. All right. You were not involved at all in negotiating

04:15:15 13 that agreement, correct?

04:15:16 14 A. Correct.

04:15:16 15 Q. It was signed in February of 2019, correct?

04:15:18 16 A. That's my understanding.

04:15:19 17 Q. And the first time you ever read that agreement was in

04:15:22 18 February of this year, correct?

04:15:23 19 A. Correct.

04:15:24 20 Q. And that was right before we took your deposition in

04:15:27 21 Tokyo, correct?

04:15:28 22 A. Correct.

04:15:28 23 Q. And you said you didn't have any information except

04:15:33 24 that -- you didn't have any information about why GREE

04:15:42 25 entered that agreement, correct?

04:15:44 1 A. Of course, I had some information, but I couldn't  
04:15:47 2 disclose because it was told by lawyer.

04:15:49 3 Q. You weren't -- you weren't permitted to tell us about  
04:15:54 4 it; is that right?

04:15:55 5 A. Yes.

04:15:56 6 Q. Okay. I'll move on. And part of the agreement was  
04:16:05 7 that the parties would settle a number of lawsuits in  
04:16:07 8 Japan, correct?

04:16:08 9 A. Correct.

04:16:08 10 Q. And when the parties settled those lawsuits, neither  
04:16:14 11 side admitted liability, correct?

04:16:17 12 A. I'm not sure.

04:16:17 13 MR. SACKSTEDER: Can we see DX-221 at Page 1,  
04:16:27 14 please? And if you can go to the part that says: Whereas,  
04:16:31 15 following negotiations --

04:16:34 16 Q. (By Mr. Sacksteder) It says that nothing in this  
04:16:39 17 agreement -- without this agreement or its contents  
04:16:42 18 constituting any admission or evidence, or the basis for  
04:16:42 19 any finding or taking of judicial notice of any wrongdoing  
04:16:45 20 or liability whatsoever on the part of --

04:16:45 21 THE COURT: Slow down, counsel.

04:16:46 22 MR. SACKSTEDER: Oh, I'm sorry.

04:16:48 23 THE COURT: You're rattling it off.

04:16:50 24 MR. SACKSTEDER: Yep.

04:16:50 25 Q. (By Mr. Sacksteder) Whatsoever on part of either of

04:16:52 1 the parties, correct? Do you see that?

04:16:53 2 A. Yes, I see that.

04:17:02 3 Q. And the parties actually settled these lawsuits to

04:17:06 4 avoid the expense of litigation, correct?

04:17:08 5 A. I'm not sure.

04:17:09 6 MR. SACKSTEDER: Okay. Can we look at the whereas

04:17:11 7 clause that says "whereas the parties wish to"?

04:17:30 8 Q. (By Mr. Sacksteder) They wish to resolve the Japanese

04:17:32 9 actions to avoid the continuing expense, inconvenience and

04:17:41 10 distraction of potential protracted litigation in Japan;

04:17:41 11 do you see that?

04:17:41 12 A. Yes, I see that.

04:17:42 13 Q. And that's something that GREE and Supercell both

04:17:45 14 agreed was part of this agreement, correct?

04:17:47 15 A. Yes.

04:17:49 16 MR. SACKSTEDER: All right. You can take that

04:17:51 17 down now.

04:17:52 18 Q. (By Mr. Sacksteder) Do you have any understanding of

04:17:54 19 whether Supercell also agreed not to sue GREE for patent

04:18:00 20 infringement in the U.S. -- or in Japan, in that agreement?

04:18:03 21 A. I don't know.

04:18:04 22 Q. Okay. You don't know whether Supercell released GREE

04:18:07 23 for any past patent infringement of Supercell patents in

04:18:12 24 Japan as part of that agreement, correct?

04:18:14 25 A. I don't know.

04:18:18 1 Q. You said you were aware of Clash of Clans from very  
04:18:21 2 early?

04:18:22 3 A. Yes.

04:18:24 4 Q. Clash of Clans was really successful in 2012, wasn't  
04:18:27 5 it?

04:18:27 6 A. It was, I think.

04:18:29 7 Q. And it was in 2013 and '14 and '15, as well, correct?

04:18:35 8 A. That's my understanding.

04:18:36 9 Q. All right. And 2016?

04:18:37 10 A. Maybe because at that time, I didn't play anymore.

04:18:43 11 Q. Okay.

04:18:43 12 MR. SACKSTEDER: Can we see DX-1231, please?

04:18:46 13 Q. (By Mr. Sacksteder) DX-1231 is an email from someone  
04:18:54 14 named Martin Meijering?

04:19:04 15 A. Yes, I see that.

04:19:05 16 Q. And the date is September 25th, 2012, correct?

04:19:08 17 A. Correct.

04:19:09 18 Q. And if you go to the bottom of the first page and on to  
04:19:11 19 the second page, Mr. Meijering writes: If possible, please  
04:19:14 20 kindly share with us the PowerPoint version of CoC research  
04:19:20 21 presentation. We would like to translate to English.

04:19:22 22 Correct?

04:19:23 23 A. Yeah, correct.

04:19:24 24 Q. And CoC refers to Clash of Clans in that email,  
04:19:28 25 correct?

04:19:28 1 A. In this context, yes.

04:19:33 2 Q. And in the email at the top Mr. Meijering writes:

04:19:33 3 Thank you for sending the PPT?

04:19:39 4 That's the PowerPoint presentation, correct?

04:19:39 5 A. Correct.

04:19:40 6 Q. It has been translated to English now: When it is

04:19:43 7 completed, I will share it with you. Thank you for making

04:19:46 8 the great presentation, it is very interesting!

04:19:51 9 It says that, correct?

04:19:51 10 A. Correct.

04:19:52 11 MR. SACKSTEDER: Let's look at DX-1217, please?

04:20:01 12 Q. (By Mr. Sacksteder) DX-1217 is an email that you are

04:20:06 13 the recipient of, correct?

04:20:09 14 A. Yes.

04:20:10 15 Q. And the date is November 27th, 2012?

04:20:14 16 A. Yes.

04:20:18 17 Q. And it is from someone named Christopher Paretti?

04:20:24 18 A. Yes.

04:20:25 19 Q. And he was a GREE employee, correct?

04:20:27 20 A. Yes.

04:20:28 21 Q. And he states that his biggest concern is that CoC is a

04:20:32 22 very, very well-done game from game design perspective. We

04:20:38 23 need to be very clear upfront on -- says we need to be very

04:20:47 24 clear upfront on how we match and ideally surpass that bar

04:20:51 25 from a user experience standpoint and figure out a place we

04:20:55 1 can be novel. Correct?

04:20:57 2 A. Correct.

04:20:58 3 Q. And that was referring to Clash of Clans as

04:21:03 4 establishing a bar to surpass, correct?

04:21:06 5 A. Yes.

04:21:06 6 Q. And also a place where GREE needed to figure out it

04:21:10 7 could be novel, correct?

04:21:12 8 A. Yes.

04:21:21 9 MR. SACKSTEDER: Can we look at DX-1218,

04:21:25 10 Mr. Smith?

04:21:26 11 Q. (By Mr. Sacksteder) And that is an email dated

04:21:30 12 November 26th, 2012, and it is from you to Christopher

04:21:39 13 Paretti, correct?

04:21:40 14 A. Correct.

04:21:40 15 Q. You sent this a few days before the previous thread

04:21:44 16 that we looked at to -- and you sent it to Mr. Paretti,

04:21:52 17 correct?

04:21:52 18 A. Correct.

04:21:53 19 Q. And you were asking whether a person named Sally was a

04:21:58 20 good fit for working on RTS?

04:22:03 21 A. Uh-huh.

04:22:03 22 Q. Is that correct?

04:22:03 23 A. Correct.

04:22:03 24 Q. And RTS, is that real-time strategy?

04:22:05 25 A. Yes.

04:22:05 1 Q. And that's a genre of games, correct?

04:22:06 2 A. A genre of games, yes.

04:22:06 3 Q. Is Clash of Clans a real-time strategy game?

04:22:11 4 A. Someone said that, you know. It's subjective matter.

04:22:19 5 Q. And that again is discussing Clash of Clans, correct?

04:22:25 6 A. Or in this mail?

04:22:27 7 Q. Uh-huh.

04:22:28 8 A. Yes.

04:22:29 9 Q. And in the email from Christopher Paretti to you it

04:22:33 10 talks about Clash of Clans being a bar and GREE having a

04:22:35 11 lot of work to do, correct?

04:22:37 12 A. Correct.

04:22:38 13 Q. And Mr. Paretti at GREE describes Clash of Clans as a

04:22:44 14 very polished and well-thought-out game, correct?

04:22:47 15 A. Correct.

04:22:47 16 Q. And that was in November of 2012, correct?

04:22:49 17 A. Correct.

04:22:58 18 MR. SACKSTEDER: Mr. Smith, can we see DX-1215,

04:23:01 19 please?

04:23:01 20 Q. (By Mr. Sacksteder) I'm not going to make you read all

04:23:03 21 of this. It is an email from a person named Steve Moy to

04:23:10 22 you, correct?

04:23:10 23 A. Correct.

04:23:10 24 Q. And this is dated November 20th, 2012, correct?

04:23:15 25 A. Correct.

04:23:17 1 Q. And the title is thoughts on studio direction and  
04:23:22 2 roadmap, correct?

04:23:23 3 A. Correct.

04:23:25 4 Q. And Steve Moy was also an employee of GREE?

04:23:31 5 A. Yes.

04:23:31 6 Q. Under the paragraph that is identified as Mr. Moy's  
04:23:39 7 first point, a little farther down, he writes: The U.S.  
04:23:44 8 market is evolving fast and quickly reaching future parity  
04:23:50 9 with the Japanese market. Card games were new in the U.S.  
04:23:55 10 a year ago, but there are now several on the market and  
04:23:58 11 more coming out every week.

04:24:00 12 Do you see that?

04:24:01 13 A. Yes, I see that.

04:24:02 14 Q. Under his second point, he writes that it is difficult  
04:24:05 15 to attract and retain the best count -- strike that.

04:24:09 16 He -- he writes: It is difficult to attract and  
04:24:13 17 retain the best talent if we are not creating more  
04:24:17 18 innovating -- innovative projects [sic], correct?

04:24:22 19 A. Correct.

04:24:22 20 Q. And Mr. Moy was knowledgeable about the projects at  
04:24:26 21 GREE in 2012, correct?

04:24:27 22 A. Correct.

04:24:27 23 Q. And he said they needed to be more innovative, correct?

04:24:31 24 A. Yes -- it doesn't -- I don't agree with that because he  
04:24:36 25 says in this paragraph, it is difficult to attract and

04:24:45 1 retain this talent, but he didn't say we are not creative  
04:24:49 2 or innovative.

04:24:50 3 Q. Well, he wrote that morale is relatively low around the  
04:24:54 4 game development studio, correct?

04:25:02 5 A. Oh, yeah, yeah, he said -- he wrote that.

04:25:07 6 Q. And the next thing he said was a large part of this is  
04:25:10 7 clearly due to our general lack of successful titles,  
04:25:14 8 correct?

04:25:14 9 A. Correct.

04:25:19 10 Q. And he was referring to GREE's lack of successful  
04:25:24 11 titles, correct?

04:25:25 12 A. Not -- no. He didn't say about GREE, because in this  
04:25:31 13 context, the studio means my team at the GREE U.S. studio.  
04:25:37 14 There were lots of studio at that time.

04:25:39 15 Q. Okay. So the GREE studio in the U.S. had a lack of  
04:25:43 16 successful titles at that time, right?

04:25:45 17 A. GREE has two studios at that time --

04:25:47 18 Q. Yes.

04:25:48 19 A. -- in U.S.

04:25:51 20 Q. And there was at that studio that he's referring to a  
04:25:55 21 general lack of successful titles, correct?

04:25:58 22 A. So it was my part of the studio he was mentioning.

04:26:02 23 Q. And so it was the part that you were in charge of?

04:26:05 24 A. Yes.

04:26:05 25 Q. And was the other one the part that had been acquired

04:26:09 1 when the company Funzio was acquired?

04:26:12 2 A. It was mixed, so it was not clearly separated.

04:26:17 3 MR. SACKSTEDER: Can we look at DX-1214, please?

04:26:23 4 Q. (By Mr. Sacksteder) And DX-1214 is an email from

04:26:26 5 someone named Tom Dimopoulos to you, correct?

04:26:35 6 A. Correct.

04:26:35 7 Q. And it's dated December 11th, 2012, correct?

04:26:39 8 A. Correct.

04:26:39 9 Q. And this is -- and Tom Dimopoulos was an employee of

04:26:45 10 GREE at the time, correct?

04:26:45 11 A. Correct.

04:26:47 12 Q. GREE conducted a survey in December of 2012 that

04:26:51 13 specifically selected for a co -- for the cohort group,

04:26:57 14 ages 18 to 35, 75 percent male, and required that they were

04:27:02 15 a current Clash of Clans player, correct?

04:27:04 16 A. Correct.

04:27:07 17 Q. So that's referring to an internal -- a GREE survey of

04:27:11 18 players, and they had to be Clash of Clans players already,

04:27:16 19 correct?

04:27:16 20 A. It looks like that.

04:27:19 21 Q. And the purpose of the survey was to gather data on

04:27:24 22 players' interests for themes that GREE was considering

04:27:30 23 using in its RTS, or real-time strategy, game, correct?

04:27:35 24 A. Correct.

04:27:35 25 Q. And one of the requirements was that they had to be

04:27:39 1 somebody who already played Clash of Clans, correct?

04:27:41 2 A. Correct.

04:27:43 3 Q. On the second page, you say I'm very curious and want

04:27:50 4 to understand for future projects, correct? It's down at

04:28:04 5 the bottom.

04:28:06 6 A. The bottom?

04:28:07 7 Q. Yes, sure.

04:28:08 8 A. Yes, correct.

04:28:11 9 MR. SACKSTEDER: Let's look at DX-200, please.

04:28:29 10 Q. (By Mr. Sacksteder) DX-200 is a Confluence page; is

04:28:32 11 that right?

04:28:32 12 A. Yes, correct.

04:28:33 13 Q. And Confluence is a -- sort of a work collaboration

04:28:38 14 system that's used at GREE, correct?

04:28:40 15 A. Correct.

04:28:40 16 Q. And there are a couple of bullet points there. First

04:28:43 17 it says Clash of Clans, and then it says SUSANOO below

04:28:50 18 that?

04:28:50 19 A. Yes.

04:28:50 20 Q. SUSANOO is the internal code name for Tenmega, correct?

04:28:56 21 A. Correct.

04:28:56 22 Q. And Tenmega is the game that the claimed invention in

04:29:01 23 the '594 patent was developed for, correct?

04:29:02 24 A. Correct.

04:29:08 25 Q. If you go down farther, there are screenshots of games,

04:29:16 1 and the one that's kind of in the middle at the top is a  
04:29:21 2 Clash of Clans character that's shown, correct?  
04:29:25 3 A. Correct.  
04:29:26 4 Q. And then if you go down farther, there are some SUSANOO  
04:29:31 5 or Tenmega characters, as well, correct?  
04:29:37 6 MR. SACKSTEDER: A little farther down.  
04:29:39 7 A. Yes.  
04:29:40 8 Q. (By Mr. Sacksteder) Yeah.  
04:29:42 9 THE COURT: Counsel, what would you estimate the  
04:29:44 10 remainder of your cross to be timewise?  
04:29:46 11 MR. SACKSTEDER: I would say, Your Honor, about no  
04:29:49 12 more than 10 minutes or so.  
04:29:52 13 THE COURT: All right. Let's continue.  
04:29:54 14 Q. (By Mr. Sacksteder) Okay. So that shows both Clash of  
04:29:57 15 Clans characters and then sort of replacing them with  
04:30:00 16 SUSANOO or Tenmega characters, correct?  
04:30:02 17 MR. MOORE: Objection, Your Honor. At this point  
04:30:05 18 I'm going to have to object under Motion in Limine No. 8.  
04:30:16 19 THE COURT: You're talking about Defendant's  
04:30:18 20 Motion in Limine 8 or Plaintiff's?  
04:30:19 21 MR. MOORE: It actually was an agreed -- I believe  
04:30:21 22 it was filed by the Defendant and ultimately was agreed to  
04:30:24 23 by the parties.  
04:30:26 24 MR. SACKSTEDER: I'll withdraw the question,  
04:30:27 25 Your Honor.

04:30:27 1 THE COURT: All right. The question is withdrawn.

04:30:28 2 Let's proceed.

04:30:35 3 MR. SACKSTEDER: And the -- can we put the

04:30:37 4 document back up and show the date, Mr. Smith, please?

04:30:54 5 Q. (By Mr. Sacksteder) And the date says created by Taiki

04:31:00 6 Eda on May 10th, 2013, correct?

04:31:01 7 A. Correct.

04:31:01 8 Q. And Taiki Eda is the inventor on the '594 patent,

04:31:07 9 correct?

04:31:07 10 A. Correct.

04:31:08 11 Q. And he was working on SUSANOO but doesn't work at GREE

04:31:12 12 anymore, correct?

04:31:13 13 A. Correct.

04:31:13 14 MR. SACKSTEDER: Can we pull up DX-1229 first?

04:31:18 15 Q. (By Mr. Sacksteder) DX-1229 is a document that is

04:31:27 16 mostly in Japanese.

04:31:29 17 MR. SACKSTEDER: So if we could pull up 1229B,

04:31:35 18 which is the English translation, please?

04:31:37 19 Q. (By Mr. Sacksteder) And there is a link to a website

04:31:44 20 that says <HTTP://bootcamp.dev.gree>, and it goes on with some

04:31:55 21 more of the Internet address there. Do you see that?

04:31:58 22 A. Correct.

04:31:58 23 Q. And GREE sometimes --

04:32:01 24 MR. MOORE: Your Honor, I apologize. I'm going to

04:32:03 25 have to object under the same motion in limine.

04:32:05 1 THE COURT: All right. Just a moment.

04:32:28 2 What's your response, Mr. Sacksteder?

04:32:30 3 MR. SACKSTEDER: Your Honor, this was -- this

04:32:32 4 document was addressed during the pre-trial and during

04:32:39 5 negotiations over the exhibit list, and there were some

04:32:42 6 redactions put in in light of those concerns. And I can

04:32:46 7 limit myself to just walking through them, having

04:32:51 8 Mr. Araki, you know, agree that it says certain things, if

04:32:53 9 that's acceptable.

04:33:02 10 THE COURT: And this document is a pre-admitted

04:33:05 11 exhibit?

04:33:05 12 MR. KOHM: Yes.

04:33:06 13 MR. SACKSTEDER: Yes.

04:33:09 14 THE COURT: Well, pre-admitted though it be, it's

04:33:13 15 still subject to the agreement of the parties represented

04:33:15 16 by Defendant's MIL No. 8.

04:33:18 17 You're still urging your objection?

04:33:23 18 MR. MOORE: We are, Your Honor.

04:33:28 19 MR. SACKSTEDER: Your Honor, may I?

04:33:32 20 THE COURT: What?

04:33:34 21 MR. SACKSTEDER: It was --

04:33:35 22 THE COURT: Oh, I'm sorry.

04:33:36 23 MR. SACKSTEDER: I - this was addressed during the

04:33:38 24 pre-trial with -- with Magistrate Judge Payne, and the

04:33:40 25 redactions were put in in an attempt to address the

04:33:45 1 concerns that were raised.

04:33:49 2 THE COURT: So are you telling me that it's  
04:33:51 3 insulated from violating the MIL by means of the  
04:33:55 4 redactions?

04:33:56 5 MR. SACKSTEDER: It -- I understood that the  
04:33:57 6 redactions were what resolved the MIL and what resolved the  
04:34:02 7 argument over the exhibit during pre-trial process.

04:34:09 8 THE COURT: Give me specifically the substance of  
04:34:11 9 your objection, Mr. Moore.

04:34:15 10 MR. MOORE: Your Honor, we believe that use of  
04:34:18 11 this document in the way I believe that opposing counsel is  
04:34:21 12 trying to use it would violate Motion in Limine No. 8  
04:34:24 13 because it is squarely offered for that purpose.

04:34:27 14 We do not -- we did not -- we reached the  
04:34:30 15 agreement on the text of the MIL before -- without regard  
04:34:33 16 to any documents. What we argued at pre-trial was specific  
04:34:37 17 documents, and we maintained our objections to those  
04:34:40 18 documents.

04:34:40 19 And I think where he's going with this and what  
04:34:43 20 I've seen him attempting to do is in violation of the  
04:34:46 21 parties' agreement in view of what I think he's going to  
04:34:50 22 try to argue or show.

04:34:54 23 THE COURT: All right.

04:34:55 24 MR. SACKSTEDER: Your Honor, I'm happy to just  
04:34:59 25 read the document and do --

04:35:03 1                   THE COURT: Let's do this. In light of the  
04:35:09 2 objection and the development of it that we had, restate  
04:35:11 3 your question to the witness, and then I'll consider it  
04:35:15 4 under this discussion, unless you're going to tell me  
04:35:18 5 you're going to move on and withdraw the question.

04:35:20 6                   MR. SACKSTEDER: I can ask a series of questions  
04:35:22 7 that just go through -- I believe I asked about the URL in  
04:35:26 8 the middle, and I may have asked for some additional  
04:35:31 9 information about that. I'm happy to withdraw that  
04:35:33 10 question.

04:35:33 11                   THE COURT: All right. Then proceed in light of  
04:35:36 12 that withdrawal.

04:35:36 13                   MR. SACKSTEDER: Thank you, Your Honor.

04:35:36 14 Q. (By Mr. Sacksteder) So Exhibit 1229B is an English  
04:35:49 15 translation of a Confluence page that was on the Confluence  
04:35:55 16 system at GREE, correct?

04:35:57 17 A. Correct.

04:35:58 18 Q. All right. And there is a URL that says in part  
04:36:04 19 HTTP:\\bootcamp -- actually //bootcamp.dev.gree, correct?

04:36:11 20 A. Correct.

04:36:12 21 Q. And then there's some bullet points up above that say  
04:36:15 22 able to operate 5 types/total 6 -- 60 characters at a time  
04:36:20 23 by AI, correct?

04:36:21 24 A. Correct.

04:36:24 25 Q. Next bullet point says: Total 30 buildings, including

04:36:29 1 three types of defense facilities at a time.

04:36:31 2                   Correct?

04:36:32 3 A.    Correct.

04:36:32 4 Q.    And then the third one says: Dynamic downloading for

04:36:36 5 assets.

04:36:36 6                   Correct?

04:36:36 7 A.    Correct.

04:36:37 8 Q.    And then at the top or a little above that it says:

04:36:40 9 NEIP: Assignments: Exercising to Create Service: Clash of

04:36:40 10 Clans.

04:36:49 11                   Correct?

04:36:49 12 A.    Correct.

04:36:50 13 Q.    There are some bullet points down below, and one of

04:36:55 14 those bullet points says: Each specification other than

04:36:58 15 that must be compliant to the latest Clash of Clans.

04:37:00 16                   Correct?

04:37:06 17 A.    Correct.

04:37:06 18 Q.    And the date is January 14th, 2014, correct?

04:37:08 19 A.    Correct.

04:37:13 20                   MR. SACKSTEDER: We can take that down, Mr. Smith.

04:37:27 21 Can we put up DX-1226B, please?

04:37:39 22                   MR. MOORE: Your Honor, I must renew the objection

04:37:42 23 and ask that it be taken down.

04:37:54 24                   THE COURT: All right. Let's do this.

04:37:57 25                   Ladies and gentlemen of the jury, I'll take this

04:37:58 1 up with counsel, and we'll get some clarity on this point  
04:38:02 2 before we continue with the Defendant's cross-examination.

04:38:04 3 In the meantime, I'm going to allow you to retire  
04:38:07 4 to the jury room and have recess. If you'll just leave  
04:38:10 5 your notebooks closed and in your chairs. Follow my  
04:38:13 6 instructions, including, of course, not to discuss the  
04:38:18 7 case, and we'll have you back in here shortly to continue.

04:38:21 8 The jury is excused for recess.

04:38:34 9 COURT SECURITY OFFICER: All rise.

04:38:35 10 (Jury out.)

04:38:36 11 THE COURT: Be seated.

04:38:58 12 All right. Let's put the document back up that  
04:39:01 13 was briefly on the screen before I sent the jury out.

04:39:08 14 It looks like it uses the word "clone" clearly,  
04:39:11 15 and Defendant's MIL 8, as agreed to by the parties,  
04:39:14 16 provides that neither party will offer testimony, argument,  
04:39:21 17 or evidence that either party copied, cloned, stole, or  
04:39:26 18 imitated anything. So with the word "clone" on it, why is  
04:39:28 19 that not a violation?

04:39:31 20 MR. SACKSTEDER: It should be redacted,  
04:39:33 21 Your Honor.

04:39:33 22 THE COURT: Well, I saw it plain and clear when  
04:39:37 23 they put it on the screen. Put it back up. Blow up that  
04:39:44 24 first area right there. Yeah.

04:39:46 25 MR. SACKSTEDER: Oh, that shouldn't be there,

04:39:49 1 Your Honor.

04:39:49 2 THE COURT: Please create clone for Clash of Clans  
04:39:52 3 battle scene.

04:39:54 4 MR. SACKSTEDER: That was supposed to be redacted.

04:39:54 5 MR. MOORE: Your Honor, it's actually three times.

04:39:55 6 THE COURT: Well, I just saw it once, but it's --

04:39:58 7 yeah, it's there.

04:39:58 8 MR. SACKSTEDER: We -- I don't know what happened.

04:40:01 9 THE COURT: Okay.

04:40:02 10 MR. DACUS: So that we're clear, Your Honor, if I  
04:40:04 11 might.

04:40:04 12 THE COURT: Yes.

04:40:06 13 MR. DACUS: We have a redacted version.

04:40:08 14 THE COURT: The unredacted version got in by  
04:40:11 15 mistake?

04:40:12 16 MR. DACUS: Yes, sir. That's what I'm standing up  
04:40:14 17 to tell you.

04:40:14 18 THE COURT: All right.

04:40:15 19 MR. DACUS: And so that the Court understands this  
04:40:17 20 issue in general, this issue has been heavily litigated in  
04:40:21 21 front of Magistrate Payne. They went through these  
04:40:23 22 documents in detail.

04:40:23 23 The Court is exactly correct, the words "clone,"  
04:40:27 24 "copy," those things were to be redacted. We were not to  
04:40:31 25 say those terms. We do not plan to.

04:40:34 1           But the documents that's being presented are ones  
04:40:37 2 that have been blessed by the Magistrate Judge and are  
04:40:42 3 pre-admitted exhibits. I offer that just for the context  
04:40:42 4 for the Court and --

04:40:42 5           THE COURT: Okay.

04:40:44 6           MR. DACUS: -- and apologies for putting up one  
04:40:46 7 that was unredacted. That -- that was absolute error.

04:40:47 8           THE COURT: Here's what we're going to do. You  
04:40:50 9 told me 15 minutes ago you had 10 more minutes of cross.  
04:40:53 10 We're going to take a recess.

04:40:55 11           During the recess, you're going to double-check  
04:40:57 12 any documents you intend to use in the remaining of the --  
04:41:01 13 the remainder of this cross-examination and make sure that  
04:41:04 14 if there are any that are to be redacted, it's the redacted  
04:41:08 15 versions that you have in the queue to put up before the  
04:41:10 16 jury. And then we'll come back, and we'll go through the  
04:41:14 17 rest of your cross-examination.

04:41:16 18           If it's a pre-admitted document and it's subject  
04:41:19 19 to redactions ordered as a part of the limine practice,  
04:41:25 20 then if it is redacted as the limine requires, there should  
04:41:29 21 be no problem with the use of it. And whatever is  
04:41:32 22 unredacted is unredacted.

04:41:34 23           But we're certainly not going to put a document up  
04:41:37 24 that flies in the face of the agreed MIL order, which  
04:41:43 25 apparently has happened. And I take you at your word,

04:41:46 1 Mr. Dacus, unintentionally.

04:41:49 2 MR. DACUS: And I -- I asked the operator to pull  
04:41:52 3 it down as quickly as we could -- as soon as we saw it,  
04:41:53 4 Your Honor. Had had -- we had the redacted copy and --

04:41:55 5 THE COURT: Well, let's check -- let's get the  
04:41:56 6 redacted version of this one, and let's make sure anything  
04:42:00 7 else Mr. Sacksteder is going to use the remainder of his  
04:42:02 8 cross is equally redacted where it might be required to.

04:42:07 9 MR. DACUS: Yes, Your Honor.

04:42:08 10 MR. MOORE: Your Honor, may we ask that the Court  
04:42:10 11 instruct the jury disregard anything they saw before?

04:42:12 12 THE COURT: Yes. And I'll do that when they  
04:42:14 13 return.

04:42:14 14 MR. MOORE: Thank you. And just for our record,  
04:42:16 15 we have continued to maintain objections to these. I  
04:42:18 16 believe he is clearly stepping right up to, if not over the  
04:42:22 17 line, in trying to insinuate exactly what is redacted out  
04:42:25 18 of these documents.

04:42:26 19 So just, again, for the record, we're objecting to  
04:42:29 20 this line of questioning, but I understand Your Honor's  
04:42:32 21 viewpoint on that.

04:42:33 22 THE COURT: Well, the documents have been examined  
04:42:35 23 by the Magistrate Judge for admissibility. And if they're  
04:42:39 24 pre-admitted, that means that the Magistrate Judge has  
04:42:43 25 found them to be admissible under the Rules of Evidence.

04:42:48 1 If they're likewise subject to redactions pursuant to the  
04:42:49 2 MIL order, then they should be appropriately redacted. But  
04:42:51 3 if they meet the redaction requirements and they're  
04:42:54 4 otherwise pre-admitted, then they are what they are.

04:42:56 5 MR. MOORE: Thank you, Your Honor.

04:42:57 6 THE COURT: Okay?

04:42:58 7 All right. Let's take a 10-minute recess. The  
04:43:00 8 Court stands in recess.

04:43:03 9 COURT SECURITY OFFICER: All rise.

04:58:49 10 (Recess.)

04:58:52 11 (Jury out.)

04:58:52 12 COURT SECURITY OFFICER: All rise.

04:58:53 13 THE COURT: Be seated, please.

04:58:54 14 Mr. Sackstedler -- Sacksteder, I'm sorry, with  
04:59:04 15 regard to any of the documents that have been pre-admitted  
04:59:11 16 and also intersect -- intersect with Motion in Limine  
04:59:14 17 No. 8, I'm going to instruct you to certainly use those as  
04:59:19 18 they represent themselves on the face of them.

04:59:22 19 I'm going to instruct you not to characterize them  
04:59:24 20 to the witness who, given his limited use of English, might  
04:59:32 21 not understand the implications of any of the -- the  
04:59:36 22 characterizations you might put on them. Ask him whatever  
04:59:40 23 it says on the face of it, but don't characterize what's  
04:59:43 24 there and then ask him to comment on it. All right?

04:59:43 25 MR. SACKSTEDER: Thank you, Your Honor.

04:59:43 1 THE COURT: I think that will hew more truly to  
04:59:46 2 the spirit of an order in limine.

04:59:47 3 MR. SACKSTEDER: Of course, Your Honor. Can I  
04:59:49 4 characterize them as emails and Confluence pages, or is  
04:59:53 5 that --

04:59:54 6 THE COURT: I don't think there's -- I mean, I  
04:59:56 7 don't think there's any dispute that an email is an email.

04:59:58 8 MR. SACKSTEDER: Right.

05:00:00 9 THE COURT: But I'm not -- I'm not as concerned  
05:00:03 10 about calling something an email, as opposed to a letter or  
05:00:06 11 another document. I am concerned about taking the language  
05:00:12 12 on the face of it, no matter what it is, if it is one of  
05:00:15 13 those that's been redacted pursuant to MIL No. 8, and then  
05:00:19 14 asking the witness if it doesn't say such and such when  
05:00:27 15 you're not using exact quotes from the document. That's  
05:00:27 16 where I think the mischief might lie.

05:00:29 17 MR. SACKSTEDER: Okay.

05:00:31 18 THE COURT: All right?

05:00:32 19 MR. SACKSTEDER: That's fine.

05:00:33 20 THE COURT: All right. Let's bring in the jury.

05:00:35 21 COURT SECURITY OFFICER: All rise.

05:00:36 22 (Jury in.)

05:01:02 23 THE COURT: Welcome back, ladies and gentlemen.

05:01:05 24 Please be seated.

05:01:05 25 Members of the jury, at the time that you left for

05:01:09 1 recess, just before that, there was a document placed on  
05:01:13 2 the screens in the courtroom that was pretty promptly taken  
05:01:17 3 down, but it was on the screen for a few seconds. That's  
05:01:23 4 what drew the objection from the Plaintiff, and I've -- I'm  
05:01:26 5 sustaining that objection, and I'm instructing you to the  
05:01:30 6 extent during that brief time you saw anything on that  
05:01:33 7 document, you should disregard it.

05:01:35 8 Otherwise, we'll continue with the Defendant's  
05:01:38 9 cross-examination.

05:01:41 10 MR. SACKSTEDER: Thank you, Your Honor.

05:01:42 11 Can we put back up the English translation of  
05:01:48 12 1226B?

05:01:50 13 Q. (By Mr. Sacksteder) Mr. Araki, this document is dated  
05:01:57 14 as being sent April 7th, 2014, correct?

05:02:01 15 A. Correct.

05:02:02 16 Q. And it is an email, correct?

05:02:09 17 A. What's the question?

05:02:10 18 Q. It's an email, correct?

05:02:11 19 A. Yes, right.

05:02:13 20 MR. SACKSTEDER: Can we look at DX-217, please?

05:02:25 21 Q. (By Mr. Sacksteder) DX-217 is an email string that  
05:02:31 22 was -- you are the recipient of, correct?

05:02:34 23 A. Correct.

05:02:35 24 Q. And the date is March 8th, 2015, correct?

05:02:38 25 A. Correct.

05:02:44 1 Q. And the title is Clash of Clans designing games that  
05:02:48 2 people will play for years, and then in parentheses,  
05:02:53 3 F2P/Design. Correct?

05:02:54 4 A. Correct.

05:02:55 5 Q. Thank you very much, Mr. Araki.

05:03:01 6 MR. SACKSTEDER: I have no more questions.

05:03:03 7 THE COURT: You pass the witness, counsel?

05:03:05 8 MR. SACKSTEDER: I do pass the witness.

05:03:07 9 THE COURT: All right. Is there redirect,

05:03:09 10 Mr. Moore?

05:03:10 11 MR. MOORE: One very brief area, Your Honor.

05:03:13 12 THE COURT: All right. Proceed with your redirect  
05:03:24 13 examination.

05:03:24 14 MR. MOORE: Thank you, Your Honor.

05:03:26 15 Could we please pull up Plaintiff's Exhibit 480?

05:03:26 16 REDIRECT EXAMINATION

05:03:26 17 BY MR. MOORE:

05:03:31 18 Q. And is this the license and settlement agreement  
05:03:35 19 between GREE and Supercell that relates to Japan?

05:03:39 20 A. Correct.

05:03:40 21 Q. Okay.

05:03:41 22 MR. MOORE: Would you please turn to Page 6?

05:03:47 23 Please blow up Paragraph 3.1.

05:03:51 24 Q. (By Mr. Moore) And is this the terms -- the financial  
05:03:54 25 terms of the document?

05:03:56 1 A. Correct.

05:03:57 2 Q. And it -- does it indicate that Supercell is paying

05:04:00 3 GREE?

05:04:01 4 A. Correct.

05:04:02 5 Q. And GREE did not pay anything to Supercell under this

05:04:05 6 agreement, correct?

05:04:05 7 A. Correct.

05:04:06 8 Q. And what market were -- was Supercell's payment for?

05:04:12 9 A. Japanese market.

05:04:13 10 Q. Did that payment have anything to do with Supercell's

05:04:17 11 United States market?

05:04:18 12 A. No.

05:04:19 13 Q. Thank you.

05:04:20 14 MR. MOORE: I pass the witness, Your Honor.

05:04:22 15 THE COURT: Further cross-examination?

05:04:23 16 MR. SACKSTEDER: No, Your Honor.

05:04:23 17 THE COURT: All right. Mr. Araki, you may step

05:04:26 18 down, sir.

05:04:27 19 Plaintiff, call your next witness.

05:04:41 20 MR. MOORE: Your Honor, we will now play the

05:04:44 21 deposition of Mr. Tadashi Nagano, co-inventor of the '873

05:04:49 22 patent.

05:04:49 23 THE COURT: All right. Ladies -- ladies and

05:04:52 24 gentlemen of the jury, before we play -- or present this

05:04:54 25 witness -- excuse me, before the Plaintiff presents this

05:04:57 1 witness by deposition, I need to make one clarification for  
05:05:02 2 you.

05:05:04 3 My understanding is the witness is not an English  
05:05:08 4 speaker, and there was an interpreter involved in both the  
05:05:12 5 questions and the answers. The questions were asked in  
05:05:15 6 English, they were translated into Japanese, they were  
05:05:19 7 answered in Japanese by the witness, and then translated  
05:05:21 8 back into English.

05:05:22 9 What you're going to see has had the question  
05:05:27 10 being asked in Japanese cut out, just to save time, but if  
05:05:34 11 you don't have any explanation, you'll think there's an  
05:05:37 12 English question, and then the witness understands the  
05:05:42 13 English and answers in Japanese.

05:05:45 14 The witness didn't understand the English. It was  
05:05:48 15 translated into Japanese. But that part has been removed  
05:05:52 16 from what you're going to see and hear, simply to save  
05:05:55 17 time. And the parties have made that clear to me and asked  
05:05:57 18 me to make that clear to the jury.

05:05:58 19 All right. Let's proceed with the witness with  
05:06:00 20 that understanding.

05:06:08 21 (Videoclip played.)

05:06:11 22 QUESTION: Good morning. Please tell us your name  
05:06:14 23 for the record.

05:06:15 24 ANSWER: Tadashi Nagano.

05:06:20 25 QUESTION: Where do you work?

05:06:22 1 ANSWER: GREE.

05:06:23 2 QUESTION: What is your job title at GREE?

05:06:27 3 ANSWER: Game producer.

05:06:32 4 QUESTION: How long you have worked at GREE?

05:06:35 5 ANSWER: About eight years.

05:06:36 6 QUESTION: What did you do between high school and

05:06:41 7 your first job out of high school?

05:06:45 8 ANSWER: I went to vocational school.

05:06:49 9 QUESTION: What was the vocational school?

05:06:51 10 ANSWER: Tokyo Net Wave.

05:06:56 11 QUESTION: What kind of school is it?

05:06:57 12 ANSWER: I studied 3D art there, but the school

05:07:09 13 had other game-related classes.

05:07:23 14 QUESTION: Is tri-Ace a separate company from

05:07:24 15 GREE?

05:07:25 16 ANSWER: Yes.

05:07:25 17 QUESTION: So tri-Ace is not part of the GREE

05:07:30 18 corporate family, correct?

05:07:31 19 ANSWER: That's what -- that's what I believe.

05:07:39 20 QUESTION: What is War Corps?

05:07:40 21 ANSWER: It's the name of a game title.

05:07:49 22 QUESTION: Can you describe the game for me,

05:07:51 23 please?

05:07:51 24 ANSWER: It's a shooter game.

05:07:54 25 QUESTION: I've seen it described as a FPS/TPS

05:08:00 1 game.

05:08:01 2 ANSWER: Yes, that's correct.

05:08:02 3 QUESTION: FPS means first-person shooter?

05:08:07 4 ANSWER: Yes.

05:08:07 5 QUESTION: And the TPS means third-person shooter,

05:08:12 6 correct?

05:08:12 7 ANSWER: Yes.

05:08:14 8 QUESTION: Did GREE distribute War Corps to the

05:08:17 9 public?

05:08:17 10 ANSWER: No. It wasn't released.

05:08:19 11 QUESTION: Was any game based on War Corps that

05:08:28 12 had a different name released to the public?

05:08:31 13 ANSWER: Yes.

05:08:37 14 QUESTION: What was that game?

05:08:38 15 ANSWER: It was on a different platform released

05:08:52 16 by tri-Ace. But I do not remember the name of the game.

05:08:56 17 QUESTION: What platform was the game that was

05:08:59 18 released designed for?

05:09:01 19 ANSWER: PlayStation Vita.

05:09:02 20 QUESTION: When was the game that was released for

05:09:11 21 PlayStation Vita by tri-Ace released to the public, to the

05:09:15 22 best of your knowledge?

05:09:24 23 ANSWER: I do not remember. Maybe it was four

05:09:26 24 years ago.

05:09:28 25 QUESTION: When did you learn of the decision not

05:09:31 1 to release War Corps?

05:09:39 2 ANSWER: I do not remember exactly, but I think it  
05:09:45 3 was either in 2013 or 2014.

05:09:46 4 QUESTION: You testified that when you heard the  
05:09:52 5 project was suspended, you had a conversation with somebody  
05:09:54 6 about the possibility of releasing War Corps overseas.

05:09:58 7 Who was involved in that conversation?

05:09:59 8 ANSWER: I didn't speak with anybody verbally.

05:10:19 9 And I think the discussion took place on a chat. And I  
05:10:24 10 remember making a request to Araki-san.

05:10:28 11 QUESTION: Did Araki-san respond to your message?

05:10:32 12 ANSWER: Yes.

05:10:32 13 QUESTION: What did he say?

05:10:34 14 ANSWER: I do not remember exactly, but,  
05:10:51 15 ultimately, I believe he said that request -- it's  
05:10:55 16 difficult to accommodate your request.

05:10:58 17 QUESTION: When Araki-san responded it's difficult  
05:11:09 18 to accommodate your request, did you understand that as a  
05:11:13 19 polite way of saying no?

05:11:14 20 ANSWER: That's right.

05:11:15 21 QUESTION: Is Exhibit 2A a notification of  
05:11:23 22 invention that you and three other people submitted to  
05:11:31 23 GREE?

05:11:32 24 ANSWER: Yes, I think that's what it is.

05:11:34 25 QUESTION: What did you understand the subject

05:11:36 1 matter of Exhibit 2A to be?

05:11:38 2 ANSWER: It is what it says on the paper, the  
05:12:14 3 target-adjusting function for shooting games played in a  
05:12:18 4 touch panel environment, such as a smartphone or tablet.

05:12:23 5 QUESTION: Was the purpose of Exhibit 2A to  
05:12:25 6 provide information to the company for the purpose of  
05:12:28 7 filing a patent?

05:12:29 8 ANSWER: I think that's how it was.

05:12:35 9 QUESTION: Exhibit 2A describes a technique you  
05:12:38 10 and your colleagues came up with as part of the development  
05:12:42 11 of the War Corps game, correct?

05:12:43 12 ANSWER: Yes. This is an idea that we were  
05:12:56 13 thinking when we were developing the War Corps game.

05:12:59 14 QUESTION: In your technique that you disclosed in  
05:13:02 15 Exhibit 2A, the player touches the screen, and then a ring  
05:13:06 16 is shown at the location where the player touched the  
05:13:09 17 screen, correct?

05:13:10 18 ANSWER: Yes.

05:13:10 19 QUESTION: And that is shown in Figure 2 down at  
05:13:17 20 the bottom of the first column of the flowchart, correct?

05:13:21 21 ANSWER: The illustration on the top right with  
05:13:41 22 two circles is more accurate, I think.

05:13:43 23 QUESTION: What does Figure 2 at the bottom of the  
05:13:46 24 first column show, then?

05:13:47 25 ANSWER: According to this document, it says

05:14:07 1 display shooting circle. But I don't remember.

05:14:11 2                   QUESTION: All right. You touch the screen, a

05:14:13 3 ring appears, correct?

05:14:14 4                   ANSWER: Correct.

05:14:16 5                   QUESTION: And if the target is inside the ring,

05:14:20 6 then if you touch inside the ring again, then a shot is

05:14:28 7 fired, correct?

05:14:29 8                   ANSWER: Yes. If the ring is displayed, then if

05:14:48 9 you touch it inside the ring again, you can shoot, yes.

05:14:52 10                  QUESTION: So you tap the screen once to create a

05:14:55 11 ring, and if the target is inside the ring, then you tap it

05:14:59 12 again, and a shot is fired at the target, correct?

05:15:02 13                  ANSWER: Yes.

05:15:02 14                  QUESTION: If the target isn't at the center of

05:15:08 15 the ring, though, you definitely see the inner and outer

05:15:12 16 ring, correct?

05:15:12 17                  ANSWER: I think so.

05:15:14 18                  QUESTION: And that configuration allows you to

05:15:17 19 move the -- the rings to center the target in the ring by

05:15:27 20 swiping, correct?

05:15:29 21                  ANSWER: If you are asking about technique to

05:15:51 22 capture the enemy within the target ring, then, yes, you --

05:15:56 23 you do have to move the ring so that you can shoot the --

05:16:01 24 at the enemy.

05:16:03 25                  QUESTION: And then once the enemy is in the

05:16:06 1 target, then you can shoot the enemy again by tapping  
05:16:10 2 inside the ring, correct?

05:16:12 3 ANSWER: Yes.

05:16:12 4 QUESTION: What is Exhibit 4A?

05:16:13 5 ANSWER: As far as I can see from this document, I  
05:16:45 6 believe this is the general -- the general framework of  
05:16:51 7 game tutorial.

05:16:52 8 QUESTION: Okay. The -- the purpose of the game  
05:16:56 9 tutorial was to teach users how to play the game?

05:17:00 10 ANSWER: That's right.

05:17:02 11 QUESTION: And in the cell that has the  
05:17:07 12 quotations, the first one says: Tap the enemy to aim.  
05:17:13 13 Correct?

05:17:13 14 ANSWER: Yes.

05:17:15 15 QUESTION: That is consistent with the technique  
05:17:17 16 you developed, correct?

05:17:18 17 ANSWER: Yes.

05:17:20 18 QUESTION: So I think we all agree now, and I'll  
05:17:22 19 ask the witness if he agrees, that the top line says: Tap  
05:17:26 20 the enemy to aim. And the next line says: Tap inside the  
05:17:30 21 target or the sight to shoot.

05:17:32 22 ANSWER: Yes.

05:17:34 23 QUESTION: And that accurately describes the  
05:17:36 24 technique that you developed.

05:17:49 25 ANSWER: As I explained before, I don't know if

05:18:16 1 this accurately reflects what is in the registered patent.  
05:18:20 2 I don't know. But I believe this correctly conveys the  
05:18:26 3 idea that we had.

05:18:40 4                   QUESTION: War Corps is the game that you've been  
05:18:43 5 testifying about which was to employ your patented  
05:18:46 6 technique, correct?

05:18:46 7                   ANSWER: Yes.

05:18:47 8                   QUESTION: There's a limited number of ways that  
05:18:49 9 you can control interface items on a touchscreen, correct?

05:18:54 10                  ANSWER: I think so, but I don't remember.

05:19:01 11                  QUESTION: Well, you're familiar with a  
05:19:03 12 touchscreen, right?

05:19:04 13                  ANSWER: Yes.

05:19:06 14                  QUESTION: And you were familiar with the  
05:19:07 15 touchscreen in 2012 and 2013, correct?

05:19:11 16                  ANSWER: Yes.

05:19:13 17                  QUESTION: And the game that you were developing  
05:19:17 18 in those years was designed for a smartphone with a  
05:19:21 19 touchscreen, correct?

05:19:22 20                  ANSWER: Yes.

05:19:22 21                  QUESTION: And the way that you controlled what  
05:19:27 22 happened in an application and its user interface was by  
05:19:32 23 touching the screen, right?

05:19:34 24                  ANSWER: Yes.

05:19:37 25                  QUESTION: And that was true in 2012 and 2013,

05:19:43 1 correct?

05:19:43 2 ANSWER: I think so.

05:19:45 3 QUESTION: All I'm saying is that at the time,

05:19:49 4 people in your industry knew that the way that you

05:19:52 5 controlled what happened in an application on the

05:19:54 6 touchscreen of a smartphone was by touching the screen in

05:19:58 7 some way or other, correct?

05:20:00 8 ANSWER: Yes, I think so.

05:20:05 9 QUESTION: That was common knowledge at the time,

05:20:25 10 correct?

05:20:25 11 ANSWER: For people who were using touchscreen

05:20:30 12 devices, I think it was general knowledge.

05:20:31 13 QUESTION: At the time, did you have the ability

05:20:35 14 to explain technically to someone how this technique would

05:20:42 15 be carried out? How you would actually make the screen

05:20:46 16 show a circle and fire when you tapped in the circle?

05:20:55 17 ANSWER: Mechanism, yes. I think I was able to

05:21:13 18 explain that. However, from a technical perspective, I

05:21:19 19 wasn't well-versed in programming, so I don't think I was

05:21:21 20 capable of that.

05:21:22 21 QUESTION: So you could explain what you wanted

05:21:25 22 the display to show, but you could not explain technically

05:21:31 23 how to accomplish that? Is that an accurate description?

05:21:34 24 ANSWER: Yes.

05:21:34 25 QUESTION: Do you have any reason to believe that

05:21:39 1 at the time your co-inventors had the ability to explain  
05:21:43 2 technically how to accomplish causing this technique to be  
05:21:49 3 implemented?

05:21:54 4 ANSWER: Well, this may not be accurate, but I  
05:22:01 5 don't think so.

05:22:02 6 (Videoclip ends.)

05:22:08 7 THE COURT: Does that complete this witness by  
05:22:10 8 deposition?

05:22:11 9 MR. MOORE: It does, Your Honor.

05:22:12 10 THE COURT: All right. Your next witness is also  
05:22:14 11 a similar deposition?

05:22:16 12 MR. MOORE: It is, and it's -- a slight bit longer  
05:22:19 13 but not a lot longer than that.

05:22:22 14 THE COURT: Call this witness -- this next witness  
05:22:24 15 by deposition then.

05:22:25 16 MR. MOORE: Thank you, Your Honor.

05:22:25 17 Plaintiff now calls by deposition, Mr. Masaru  
05:22:28 18 Takeuchi, inventor of the '655 patent.

05:22:31 19 THE COURT: And this, too, is an individual who  
05:22:33 20 speaks Japanese. The questions were asked in Japanese,  
05:22:37 21 translated to English -- no, excuse me, asked in English,  
05:22:42 22 translated to Japanese. He heard the Japanese, answered in  
05:22:46 23 Japanese, and then that was translated to English.

05:22:49 24 MR. MOORE: That's right, Your Honor.

05:22:50 25 THE COURT: And the original translation of the

05:22:52 1 question from English to Japanese has been cut out?

05:22:54 2 MR. MOORE: It has, Your Honor.

05:22:55 3 THE COURT: Okay. Let's proceed then.

05:22:59 4 (Videoclip played.)

05:23:04 5 QUESTION: Good morning.

05:23:06 6 ANSWER: Morning.

05:23:07 7 QUESTION: Will you tell me your name for the

05:23:10 8 record, please?

05:23:11 9 ANSWER: Masaru Takeuchi.

05:23:11 10 QUESTION: Where do you work?

05:23:16 11 ANSWER: GREE Corporation.

05:23:17 12 QUESTION: How long have you worked for GREE?

05:23:21 13 ANSWER: Nine years.

05:23:23 14 QUESTION: Did you start in 2011?

05:23:25 15 ANSWER: Yes.

05:23:27 16 QUESTION: What was your job title when you

05:23:29 17 started working at GREE?

05:23:34 18 ANSWER: I didn't have one. Just a planner.

05:23:37 19 QUESTION: Which products were you assigned to

05:23:40 20 when you started?

05:23:42 21 ANSWER: Avatar team.

05:23:43 22 QUESTION: Avatar team?

05:23:50 23 ANSWER: Yes.

05:23:52 24 QUESTION: What is Avatar specifically?

05:23:55 25 ANSWER: It's a service where the user has a



05:26:55 1 implemented in Avatar, correct?

05:26:57 2 ANSWER: Yes.

05:26:58 3 QUESTION: And for whatever reason, your idea was

05:27:04 4 not implemented in Avatar, correct?

05:27:09 5 ANSWER: That's right.

05:27:10 6 QUESTION: You submitted the invention report,

05:27:13 7 according to the document, on July 31st of 2012, correct?

05:27:16 8 ANSWER: Yes, that's what it says.

05:27:24 9 QUESTION: How did you come up with the idea in

05:27:26 10 Exhibit 14?

05:27:27 11 ANSWER: As far as I can remember, I conceived the

05:27:47 12 idea when I was considering measures for Valentine's Day.

05:27:51 13 QUESTION: When you say measures, would another

05:27:54 14 way of describing it be campaign or program?

05:27:57 15 ANSWER: Yes.

05:28:00 16 QUESTION: Was there anything that inspired you to

05:28:03 17 think of this idea?

05:28:04 18 ANSWER: Giving a present on Valentine's Day and

05:28:27 19 getting something back on White Day, that itself was how I

05:28:33 20 conceived this idea.

05:28:34 21 QUESTION: Does GREE, through the social media

05:28:37 22 platform, receive revenues when gifts are purchased?

05:28:41 23 ANSWER: Yes.

05:28:41 24 QUESTION: You believed it would cause people to

05:28:45 25 buy more gifts, correct?

05:28:47 1 ANSWER: Yes.

05:28:48 2 QUESTION: And GREE would get some money when they

05:28:50 3 did that, correct?

05:28:51 4 ANSWER: Yes.

05:28:55 5 QUESTION: Exhibit 14 is a document you submitted

05:28:57 6 to the company to disclose your invention, correct?

05:29:03 7 ANSWER: Yes.

05:29:04 8 QUESTION: Turn to the page with the number at the

05:29:07 9 bottom that ends 156. And there's an Item 3 that says:

05:29:21 10 Summary of the Entire Invention. And then in parentheses,

05:29:25 11 describe at higher level than implementation. Do you see

05:29:29 12 that?

05:29:29 13 ANSWER: Yes.

05:29:29 14 QUESTION: That section includes a diagram,

05:29:33 15 correct?

05:29:33 16 ANSWER: Yes.

05:29:38 17 QUESTION: Does that diagram accurately reflect

05:29:43 18 the diagram that you drew on the whiteboard?

05:29:47 19 ANSWER: Yes.

05:29:47 20 QUESTION: And the idea for drawing that was to

05:29:52 21 kind of show the overall concept of your invention,

05:29:55 22 correct?

05:29:55 23 ANSWER: Yes.

05:29:55 24 QUESTION: Has your idea been used in any GREE

05:30:00 25 products, to the best of your knowledge, ever?

05:30:06 1                   ANSWER: I don't know if it was this idea, but I  
05:30:16 2 believe there was a similar idea that was used.

05:30:18 3                   QUESTION: What is the similar idea you're  
05:30:19 4 referring to?

05:30:20 5                   ANSWER: A person who receives a gift also  
05:30:34 6 receives an incentive.

05:30:35 7                   QUESTION: What GREE products are you referring  
05:30:39 8 to?

05:30:44 9                   ANSWER: Clinoppe.

05:30:46 10                  QUESTION: What is that?

05:30:47 11                  ANSWER: It's a pet that you pet on the -- the  
05:31:01 12 social -- or the networking service platform of GREE, that  
05:31:06 13 is.

05:31:06 14                  QUESTION: Have you ever been involved in any work  
05:31:09 15 on Clinoppe?

05:31:09 16                  ANSWER: No.

05:31:25 17                  QUESTION: How do you know that an idea like yours  
05:31:29 18 is being used on Clinoppe?

05:31:30 19                  ANSWER: I played -- I played Clinoppe, the game,  
05:31:42 20 and that's how I got to know it.

05:31:43 21                  QUESTION: Can you look at Box 3 with the diagram  
05:31:46 22 in Exhibit 14?

05:31:48 23                  Can you use the diagram to explain your invention  
05:31:57 24 to me?

05:31:57 25                  ANSWER: Yes.

05:31:58 1                   QUESTION: Please do.

05:31:58 2                   ANSWER: Person A buys a gift and sends that gift

05:32:17 3 to Person B. And if this Person B meets a condition, then

05:32:23 4 that person, which is Person B, receives an incentive.

05:32:28 5                   QUESTION: And who provides the incentive?

05:32:30 6                   ANSWER: There is no limitation on that part.

05:32:37 7                   QUESTION: One possibility is that the game itself

05:32:41 8 provides the incentive to the Person B who receives the

05:32:44 9 gift?

05:32:45 10                  ANSWER: Yes.

05:32:45 11                  QUESTION: The idea is to encourage users to give

05:32:55 12 more gifts, correct?

05:32:56 13                  ANSWER: Yes.

05:32:56 14                  QUESTION: How does providing an incentive item to

05:33:05 15 the recipient of a gift encourage more gift giving?

05:33:09 16                  ANSWER: I think there are many patterns. For

05:33:30 17 example, the recipient of a gift may give something back in

05:33:33 18 return.

05:33:35 19                  QUESTION: Let me make sure I understand this, and

05:33:38 20 I apologize for the time it's taking. Let me walk through

05:33:43 21 a real-world example and see if -- if I understand what's

05:33:47 22 going on.

05:33:47 23                  I'm User A, and your counsel is User B. And --

05:34:08 24 and you are the person who decides whether to give an

05:34:11 25 incentive to User B. And you have established a rule that

05:34:24 1 if a recipient receives five gifts within a day, the  
05:34:31 2 recipient will receive another item as an incentive.  
05:34:53 3 Is that consistent with your invention so far?  
05:34:56 4 ANSWER: Can you repeat one more time?  
05:35:01 5 I think that's included.  
05:35:03 6 QUESTION: All right. And I see that your counsel  
05:35:06 7 has four gifts sitting in front of him, so I know he needs  
05:35:10 8 one more gift to reach the condition which will allow him  
05:35:13 9 to receive an incentive.  
05:35:15 10 Does that makes sense?  
05:35:18 11 ANSWER: Yes.  
05:35:19 12 QUESTION: I like your counsel, and I want to give  
05:35:21 13 him a gift so he gets the incentive, so I hand him another  
05:35:26 14 gift. And then that means that you give him the incentive  
05:35:30 15 for receiving his fifth gift.  
05:35:34 16 Is that the way your invention works?  
05:35:35 17 ANSWER: That's included, yes.  
05:35:37 18 QUESTION: So that's part of your invention,  
05:35:42 19 correct?  
05:35:42 20 ANSWER: Yes.  
05:35:42 21 QUESTION: And then there are four embodiments  
05:35:44 22 shown or described, correct?  
05:35:45 23 ANSWER: Yes.  
05:35:46 24 QUESTION: So the next point says: The person who  
05:35:58 25 received the gift can get an incentive item if specific

05:36:01 1 conditions are met.

05:36:03 2 Do you see that?

05:36:04 3 ANSWER: Yes.

05:36:04 4 QUESTION: And that's like your counsel having  
05:36:07 5 four gifts, and I give him a fifth one, and then he gets an  
05:36:11 6 incentive item, correct?

05:36:13 7 ANSWER: That's one of the things that's included.

05:36:16 8 QUESTION: And then it says: There is no charge  
05:36:19 9 for the receiving party.

05:36:25 10 Does that mean that the receiving party, Person B,  
05:36:30 11 doesn't have -- have to give anything to receive the  
05:36:34 12 incentive item?

05:36:35 13 ANSWER: That's right.

05:36:37 14 QUESTION: Why is that important for your  
05:36:40 15 invention?

05:36:43 16 ANSWER: It's hard to say why, but I think this --  
05:37:00 17 I think that what this means is that Person B doesn't have  
05:37:03 18 to take any action to meet that certain condition.

05:37:07 19 QUESTION: And then the next line gives an example  
05:37:10 20 of what it would be to meet a condition for an incentive.

05:37:16 21 Would you agree with that?

05:37:19 22 ANSWER: Which line is this?

05:37:23 23 QUESTION: I'll read it so we'll be clear on what  
05:37:26 24 we're talking about.

05:37:27 25 The next line says: It is possible to receive an

05:37:30 1 item from a -- an incentive acquisition screen once a  
05:37:37 2 specific condition, in parentheses, eg, receive gifts from  
05:37:42 3 five people by July 31st close parentheses, has been  
05:37:48 4 fulfilled.

05:37:48 5 So that's what I'm referring to, and my question  
05:37:52 6 was: Does that line give an example of what it would take  
05:37:56 7 to meet a condition for an incentive item?

05:38:00 8 ANSWER: Yes.

05:38:00 9 QUESTION: What is your background, your  
05:38:01 10 educational background?

05:38:02 11 ANSWER: You're asking me what I studied in  
05:38:08 12 college?

05:38:10 13 QUESTION: Yes.

05:38:10 14 ANSWER: I studied fashion design in college.

05:38:16 15 QUESTION: Where did you go to college?

05:38:18 16 ANSWER: Kobe Art Engineering University official  
05:38:26 17 name.

05:38:26 18 CHECK INTERPRETER: I think Kobe is part of it.  
05:38:26 19 Kobe Design University.

05:38:35 20 QUESTION: Okay. Kobe Design University is what  
05:38:37 21 we're agreeing on?

05:38:41 22 INTERPRETER: I can't agree, because I don't know  
05:38:42 23 what the official name is.

05:38:44 24 QUESTION: Okay.

05:38:45 25 THE INTERPRETER: I think it's Kobe Design

05:38:48 1 University.

05:38:48 2 QUESTION: And what degree, if any, did you get  
05:38:51 3 from Kobe Design University?

05:38:53 4 ANSWER: That's -- that's difficult to answer, but  
05:38:58 5 I did graduate from the institution and from the department  
05:39:02 6 of fashion design.

05:39:03 7 QUESTION: You don't have any training in  
05:39:05 8 engineering, correct?

05:39:06 9 ANSWER: That's right.

05:39:15 10 QUESTION: And you don't have any training in  
05:39:17 11 computer programming; is that correct?

05:39:19 12 ANSWER: That's correct.

05:39:19 13 QUESTION: And you don't have any training in  
05:39:23 14 computer network design, correct?

05:39:25 15 ANSWER: That's right.

05:39:32 16 QUESTION: Do you know what a server is?

05:39:33 17 ANSWER: I'm not sure if I have a complete  
05:39:44 18 understanding of it, but I do have a general idea.

05:39:49 19 QUESTION: What is a server?

05:39:51 20 ANSWER: There are a number of concepts. But  
05:40:06 21 the -- one concept is to -- is something that you use to  
05:40:09 22 manage data on a network.

05:40:11 23 QUESTION: Do you know how a server works?

05:40:15 24 ANSWER: I don't know that far.

05:40:18 25 QUESTION: But you know a server is a conventional

05:40:21 1 piece of equipment in a computer network, correct?

05:40:26 2 ANSWER: Yes.

05:40:28 3 QUESTION: Do you know how a computer stores data?

05:40:32 4 ANSWER: No.

05:40:33 5 QUESTION: Do you know what a controller does on a

05:40:36 6 piece of computer equipment?

05:40:43 7 ANSWER: When you say controller, do you mean

05:40:46 8 interface?

05:40:46 9 QUESTION: No, I'm referring to a controller chip?

05:40:53 10 ANSWER: No.

05:40:56 11 QUESTION: If the invention that you disclosed in

05:40:59 12 Exhibit 14 had been implemented in Avatar, would that

05:41:03 13 invention have become part of the rules for using Avatar?

05:41:09 14 ANSWER: Yes.

05:41:11 15 QUESTION: And you said that there was another

05:41:13 16 game that you think your invention might be used in. It

05:41:24 17 was Clinoppe?

05:41:25 18 ANSWER: Yes.

05:41:25 19 QUESTION: And assuming that that is correct, that

05:41:28 20 your invention is used in that game, then your invention is

05:41:31 21 part of the rules for that game, correct?

05:41:33 22 ANSWER: Yes.

05:41:40 23 QUESTION: Is there any particular user interface

05:41:42 24 that is necessary to implement your invention in

05:41:46 25 Exhibit 14?

05:41:46 1 ANSWER: How the user interface should be shaped,  
05:41:56 2 I don't think that's defined.

05:41:59 3 QUESTION: Just you have to have a user interface  
05:42:03 4 that allows the users to follow the steps shown in your  
05:42:12 5 figure in Exhibit 14, correct?

05:42:14 6 ANSWER: That's right.

05:42:16 7 QUESTION: So it doesn't matter sort of how you do  
05:42:19 8 it, you just have to have User A buy a gift, give the gift  
05:42:25 9 to User B, and then User B get an incentive item if  
05:42:31 10 conditions are met, correct?

05:42:32 11 ANSWER: Yes.

05:42:37 12 (Videoclip ends.)

05:42:38 13 THE COURT: Does that complete this witness by  
05:42:39 14 deposition?

05:42:40 15 MR. MOORE: Yes, sir, it does. I'm sorry.

05:42:43 16 Apparently not.

05:42:44 17 THE COURT: Apparently not. Let's continue.

05:42:46 18 (Videoclip played.)

05:42:48 19 QUESTION: Did any work begin, either by you or by  
05:42:52 20 anybody else, to start trying to prepare it to implement in  
05:42:57 21 Avatar?

05:42:58 22 ANSWER: No.

05:43:02 23 QUESTION: So there was no work done on any  
05:43:04 24 technical implementation, correct?

05:43:06 25 ANSWER: For Avatar, that's right.

05:43:10 1                   QUESTION: Was any work done on any technical  
05:43:13 2 implementation for any other product?

05:43:18 3                   ANSWER: I don't know.

05:43:19 4                   QUESTION: So in the work that you did, there was  
05:43:21 5 no work, for instance, to determine what data would be  
05:43:28 6 stored to implement your invention, correct?

05:43:33 7                   ANSWER: Can you repeat the question again?

05:43:39 8                   I don't think there was.

05:43:41 9                   QUESTION: Sure. There was no work done to decide  
05:43:44 10 how data would be sent through the Avatar system to  
05:43:46 11 implement your invention, correct?

05:43:49 12                   ANSWER: I don't remember clearly, but I  
05:44:00 13 probably -- I don't think there was.

05:44:01 14                   QUESTION: Did you provide any other information  
05:44:03 15 about your invention for the purpose of obtaining a patent  
05:44:08 16 besides what is shown in Exhibit 14?

05:44:17 17                   ANSWER: First of all, I didn't prepare this  
05:44:29 18 document. I only provided information for preparing this  
05:44:34 19 document, and I don't know if all the information I  
05:44:39 20 provided are incorporated in this document. That's what I  
05:44:42 21 meant.

05:44:52 22                   (Videoclip ends.)

05:44:52 23                   MR. MOORE: I believe that's now it, Your Honor.

05:44:56 24                   THE COURT: Have a seat. Let's just be sure.

05:44:59 25                   MR. MOORE: Okay. I'm told that it is. I had

05:45:09 1 forgotten there was a short second day of the deposition.

05:45:12 2 THE COURT: That's fine.

05:45:12 3 MR. MOORE: Yes.

05:45:14 4 THE COURT: Ladies and gentlemen, we're going to  
05:45:15 5 stop the trial for today at this juncture. I'm going to  
05:45:18 6 release you for the weekend in just a minute.

05:45:22 7 In doing that, I'm going to ask you to be back  
05:45:25 8 rested and ready to go on Monday by 8:30 so that we can  
05:45:29 9 start about that time. If you'll be here by 8:15 or 8:20  
05:45:35 10 so that we can start as close to 8:30 as possible, I would  
05:45:39 11 appreciate it.

05:45:39 12 Let me remind you again, as you would expect, over  
05:45:42 13 the weekend not to discuss the case with anyone in any way,  
05:45:45 14 even though it's possible when you're around friends and  
05:45:49 15 family you may be asked what you've done this week.

05:45:51 16 Please follow all the other instructions I've  
05:45:53 17 given you. Be careful traveling on the road.

05:45:57 18 And one final thing before we go, I'm sure most of  
05:46:00 19 you noticed when you arrived today that the flag at this  
05:46:05 20 courthouse was at half staff. And as you all know, this is  
05:46:09 21 the 19th anniversary of the 9/11 attacks on New York City.

05:46:15 22 I'd simply like to observe that I can't think of a  
05:46:18 23 better way that you could have honored those people and our  
05:46:23 24 country than by being here and serving as jurors in a civil  
05:46:28 25 trial, supported by and guaranteed by our U.S.

05:46:34 1 Constitution. So carry that thought with you as you leave  
05:46:37 2 for the weekend.

05:46:38 3 Leave your closed notebooks on the table, and I  
05:46:41 4 will see you Monday morning. The jury is excused.

05:46:43 5 COURT SECURITY OFFICER: All rise.

05:46:44 6 (Jury out.)

05:46:49 7 THE COURT: Be seated, please.

05:47:08 8 Counsel, we have used a combined total of 8 hours  
05:47:18 9 and 2 seconds since we started the trial, against your  
05:47:22 10 allocated trial time.

05:47:24 11 Within that total, 5 hours and 36 minutes has been  
05:47:32 12 used by the Plaintiff.

05:47:33 13 And 2 hours and 24 minutes has been used by the  
05:47:37 14 Defendant.

05:47:38 15 Are there any questions or issues that need to be  
05:47:42 16 raised with the Court before we recess for the weekend?

05:47:45 17 Anything from the Plaintiff?

05:47:45 18 MR. MOORE: Nothing from the Plaintiff,  
05:47:47 19 Your Honor.

05:47:47 20 THE COURT: Anything from the Defendant?

05:47:48 21 MR. DACUS: No, Your Honor. Thank you.

05:47:50 22 THE COURT: All right. I will see you Monday  
05:47:51 23 morning. Until then, we stand in recess.

05:47:54 24 COURT SECURITY OFFICER: All rise.

05:47:57 25 (Recess.)

1 CERTIFICATION  
2  
3

4 I HEREBY CERTIFY that the foregoing is a true and  
5 correct transcript from the stenographic notes of the  
6 proceedings in the above-entitled matter to the best of my  
7 ability.

8 /S/ Shelly Holmes \_\_\_\_\_  
9 SHELLY HOLMES, CSR, TCRR  
10 OFFICIAL REPORTER  
State of Texas No.: 7804  
Expiration Date: 12/31/20

9/11/2020  
Date

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